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ABSTRACT

The Education Division of the Department of Health, Education, and Welfare issues these general regulations to apply to direct grant and state programs administered by the Education Division. These regulations provide general rules on how to apply for grants and subgrants, how grants and subgrants are made, the general conditions that apply to grantees and subgrantees, the administrative responsibilities of grantees and subgrantees, and the compliance procedures used by the Education Division. Rules that apply only to a particular program are included in separate regulations for that program. (Author)

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federal register

U.S. DEPARTMENT OF HEALTH,
EDUCATION & WELFARE
NATIONAL INSTITUTE OF
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Note: See Parts IV and XVIII of this issue for documents related to EDGAR

Part II

Department of Health, Education, and Welfare

Office of Education

Education Division General Administrative Regulations (EDGAR)

EA 012 636

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Education Division

45 CFR Chapters I, XIV, and XV

Education Division General Administrative Regulations (EDGAR)

AGENCY: Education Division, HEW.

ACTION: Final regulations.

SUMMARY: The Education Division, HEW, issues these general regulations to apply to direct grant and State-administered programs administered by the Education Division, and these general definitions to apply to all programs of the Education Division. The statutory authority for the regulations is the General Education Provisions Act and the statutes that authorize the programs covered.

These regulations provide general rules on how to apply for grants and subgrants, how grants and subgrants are made, the general conditions that apply to grantees and subgrantees, the administrative responsibilities of grantees and subgrantees, and the compliance procedures used by the Education Division. Rules that apply only to a particular program will be included in separate regulations for that program.

EFFECTIVE DATE: These regulations are expected to take effect 45 days after they are transmitted to Congress. Regulations are usually transmitted to Congress several days before thay are published in the **Federal Register.** The effective date is changed by statute if Congress disapproves the regulations or takes certain adjournments. If you want to know the effective date of these regulations, call or write the Education Division contact person.

FOR FURTHER INFORMATION CONTACT: A. Neal Shedd, Director, Division of Regulations Management, U.S. Office of Education, 400 Maryland Avenue, S.W. (Room 2129, FOB-6), Washington, D.C. 20202. Telephone (202) 245-7091 or—for general information on Education Division programs—the appropriate Regional Office listed below:

Region I—Boston, Massachusetts, 617-223-6814.
Region II—New York, New York, 212-264-8145.
Region III—Philadelphia, Pennsylvania, 215-596-1044.
Region IV—Atlanta, Georgia, 404-221-2343.
Region V—Chicago, Illinois, 312-353-6679.
Region VI—Dallas, Texas, 214-767-3711.
Region VII—Kansas City, Missouri, 816-374-5800.
Region VIII—Denver, Colorado, 303-837-4295.
Region IX—San Francisco, California, 415-556-4570.
Region X—Seattle, Washington, 206-442-0450.

SUPPLEMENTARY INFORMATION: The Education Division General Administrative Regulations (EDGAR) were published as a notice of proposed rulemaking in the **Federal Register** on May 4, 1979 (44 FR 26308). The proposed regulations consolidated into a single document common requirements found in existing Education Division regulations. With the publication of these final regulations, overlapping provisions in individual program regulations are being eliminated, as are the general grant regulations of the Office of Education and the National Institute of Education. Revisions to the program regulations—except for certain selection criteria (see below)—are included in this document, following the text of EDGAR. EDGAR contains three parts—100a, for direct grant programs; 100b, for State-administered programs; and 100c, general definitions for all programs. Part 100e, the procedures for the Education Appeal Board, was published as interim final regulations in the **Federal Register** on May 25, 1979 (44 FR 30523). It is published in final in today's **Federal Register** and renumbered as Part 100d.

EDGAR will remain in effect under the Department of Education Organization Act. Technical changes necessary because of the new Department of Education will be made at a future date. In the meanwhile, applicants and grantees under programs now administered by the Education Division are subject to the requirements in EDGAR, except as specified below under "Applicability of EDGAR."

The Education Division received numerous comments from the public on the proposed EDGAR, especially on the major issues that were outlined in the preamble of the proposed EDGAR. A discussion of major issues and a summary of the public comments and Education Division's responses to those comments—including the changes made to the regulations—are attached as Appendix A to this document. Appendix B is a copy of 45 CFR Part 74, the HEW general regulations for the administration of grants. 45 CFR Part 74 applies to Education Division grant programs.

The original intention to include an index to EDGAR and 45 CFR Part 74 with the final regulations has been abandoned; no index will be provided. However, cross-references to relevant sections of 45 CFR Part 74 are included in the text of EDGAR at appropriate places.

Applicability of EDGAR

Part 100a of EDGAR will apply to all grants made after the effective date of EDGAR under Education Division direct grant programs, with the following exception. The pre-grant procedures in Part 100a (Subparts C and D) will not apply immediately to a direct grant program unless the program statute was amended by the Education Amendments of 1978 (Pub. L. 95-561).

The application notice for each program indicates which sections of EDGAR apply to grants for fiscal year 1980.

Note.—Most application notices for Office of Education discretionary grant programs were published in the **Federal Register** on August 23, 1979 (44 FR 49574).

If EDGAR pre-grant procedures do not apply to a program, the program will use its current pre-grant procedures to make grants from appropriations for fiscal year 1980. EDGAR will be fully applicable to these programs for grants made from appropriations for fiscal year 1981, and, in any case, no later than October 1, 1980. The Education Division is proposing to amend the selection criteria for these programs in a proposed rule document in today's **Federal Register** in the proposed rules section.

The proposed rules would make the selection criteria consistent with Edgar. When these proposed rules become final, they will apply to competition for new grants made from appropriations for fiscal year 1981.

Parts 100b and 100c of EDGAR will be fully applicable on the effective date of EDGAR.

Citation of Legal Authority

A citation of statutory or other legal authority appears in parentheses on the line following each section of these regulations.

Dated: February 13, 1980.

Peter D. Relic,

Acting Assistant Secretary for Education.

Dated: February 6, 1980.

William L. Smith,

U.S. Commissioner of Education.

Dated: February 12, 1980.

Michael Timpane,

Acting Director of the National Institute of Education.

Dated: February 11, 1980.

Lee Kimchee,

Director of the Institute of Museum Services.

Approved: March 20, 1980.

Patricia Roberts Harris,

Secretary of Health, Education, and Welfare.

Title 45 of the Code of Federal Regulations is amended as follows:

1. Subchapter A is amended by revising the title and by inserting the following introduction after that title, to read as follows:

SUBCHAPTER A—EDUCATION DIVISION GENERAL ADMINISTRATIVE REGULATIONS

Introduction to Regulations of the Education Division

I. WHAT CAN I LEARN FROM THIS INTRODUCTION?

In this introduction, you will find information that will help you answer the following questions:

- What is the Education Division?
- What kinds of Federal programs of assistance does the Education Division administer?
- What Education Division regulations apply to these programs?
- How do I use Education Division regulations?
- What steps should I take to apply for assistance under an Education Division program?

II. WHAT IS THE EDUCATION DIVISION?

- The Education Division is an agency of the U.S. Department of Health, Education, and Welfare. When the Department of Education Organization Act takes effect, all of the functions of the Education Division will be transferred to the new Department of Education.
- The Education Division includes four parts:

—The Office of the Assistant Secretary for Education (including the National Center for Education Statistics);

—The United States Office of Education;

—The Institute of Museum Services; and

—The National Institute of Education.

- Each of these Offices and Institutes administers Federal programs of assistance.

III. WHAT KINDS OF FEDERAL PROGRAMS OF ASSISTANCE DOES THE EDUCATION DIVISION ADMINISTER?

- The Education Division provides assistance under two kinds of programs:

—Student financial assistance programs; and

—Grant programs.

- Student financial assistance programs include guaranteed loans, fellowships, and grants for individual students.
- Grant programs are generally divided into two kinds:

—Direct grant programs; and

—State-administered programs.

- Under a direct grant program the Education Division makes grants directly to eligible agencies, organizations, and institutions, and—under a few programs—individuals. Subgrants are not authorized.
- Under a State-administered program each State is entitled to receive funds and, depending on the requirements of the program statute, either uses the funds itself or makes subgrants to eligible agencies, organizations, and institutions.

IV. WHAT FEDERAL REGULATIONS APPLY TO THESE PROGRAMS?

- The Education Division publishes its regulations in the **Federal Register**, and codifies the regulations in Title 45 of the Code of Federal Regulations (45 CFR). There are usually regulations for each Federal program of assistance. For example, regulations for the Guaranteed Student Loan Program of the Office of Education are located in 45 CFR Part 177.
- In addition to these program regulations, there are general regulations that apply to certain categories of programs:

—Certain student financial assistance programs are subject to general regulations in 45 CFR Part 168.

—Grant programs are subject to the Education Division General Administrative Regulations (EDGAR) in 45 CFR Parts 100a and 100b. Part 100a applies to direct grant programs. Part 100b applies to State-administered programs.

—All programs are subject to the general definitions in 45 CFR Part 100c of EDGAR.

—The procedures for the Education Appeal Board are in 45 CFR Part 100d.

V. HOW DO I USE EDUCATION DIVISION REGULATIONS?

- Each set of regulations has a table of contents in the front of the regulations. The table of contents lists all of the headings used in the regulations.
- To have a complete set of requirements that apply to a program, you need a copy of—

—The program statute;

—The program regulations;

—EDGAR and 45 CFR Part 74 (for a grant program);

—The application notice that the Education Division publishes in the **Federal Register** each year (for a direct grant program under which an applicant must submit its application by a deadline);

—45 CFR Part 168 (for a student financial assistance program).

VI. WHAT STEPS SHOULD I TAKE IF I WANT TO APPLY FOR ASSISTANCE UNDER AN EDUCATION DIVISION PROGRAM?

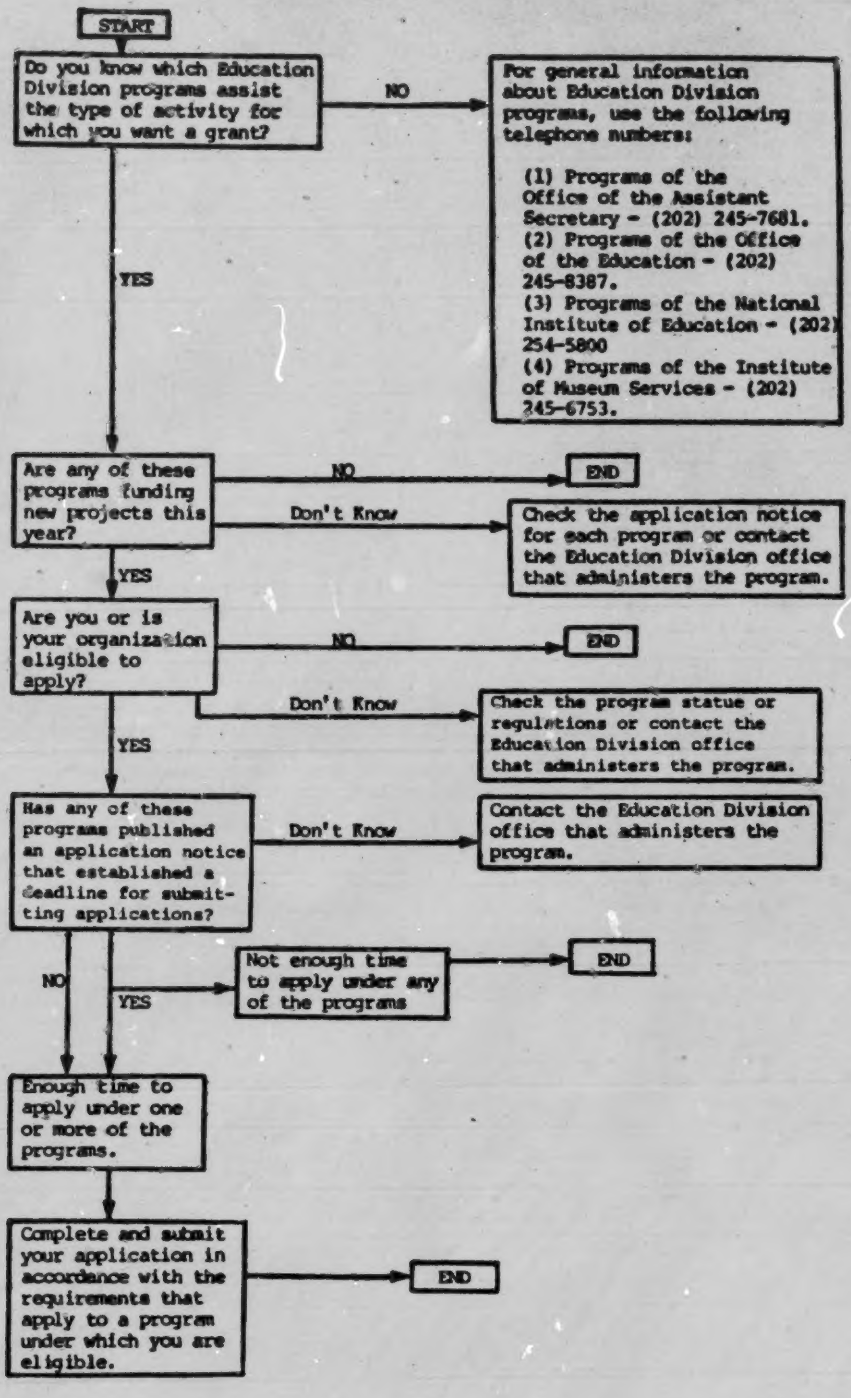
- For general information about student financial assistance, talk to a student financial aid officer at your local college or university, or write to the following address:

Bureau of Student Financial Assistance,
Division of Training and Dissemination
Information Center, U.S. Office of
Education, 400 Maryland Avenue, S.W.,
Washington, D.C. 20202

- For general information about applying to your State for a subgrant under a State-administered program, contact your State educational agency or other State agency that administers the program.
- For general information about a direct grant program of the Office of the Assistant Secretary for Education, call (202) 245-7681.
- To find out about programs administered by the National Institute of Education, call (202) 254-5800.
- To find out about programs administered by the Office of Education, call (202) 245-8387.
- To find out about programs administered by the Institute of Museum Services, call (202) 245-6753.

MAY 1 1980

To apply under a direct grant program, consider using the steps suggested in the following chart:


START
Do you know which Education Division programs assist the type of activity for which you want a grant?
NO
For general information about Education Division programs, use the following telephone numbers:
(1) Programs of the Office of the Assistant Secretary - (202) 245-7681.
(2) Programs of the Office of the Education - (202) 245-8387.
(3) Programs of the National Institute of Education - (202) 254-5800
(4) Programs of the Institute of Museum Services - (202) 245-6753.
YES
Are any of these programs funding new projects this year?
NO
END
Don't Know
Check the application notice for each program or contact the Education Division office that administers the program.
YES
Are you or is your organization eligible to apply?
NO
END
Don't Know
Check the program statue or regulations or contact the Education Division office that administers the program.
YES
Has any of these programs published an application notice that established a deadline for submitting applications?
Don't Know
Contact the Education Division office that administers the program.
NO
YES
Not enough time to apply under any of the programs
END
Enough time to apply under one or more of the programs.
Complete and submit your application in accordance with the requirements that apply to a program under which you are eligible.
END

PART 100—[REVOKED]

2. Part 100 is revoked.

3. Parts 100a, 100b, and 100c are revised to read as follows:

PART 100a—DIRECT GRANT PROGRAMS

Subpart A—General

Regulations That Apply to Direct Grant Programs

Sec.
100a.1 Programs to which Part 100a applies.
100a.2 Exceptions in program regulations to Part 100a.
100a.3 HEW general grant regulations apply to these programs.
100a.4 Education Division contracts.

Eligibility for a Grant

100a.50 How to find out whether you are eligible.
100a.51 How to prove nonprofit status.

Subpart B—[Reserved]

Subpart C—How To Apply for a Grant

The Application Notice

100a.100 Publication of an application notice; content of the notice.
100a.101 Information in the application notice that helps an applicant apply.
100a.102 Deadline date for applications.
100a.103 Deadline date for preapplications.
100a.104 Applicants must meet procedural rules.

Application Contents

100a.107 Applications for new grants under a discretionary grant program.
100a.108 Applications for new grants under a formula grant program.
100a.109 Changes to application; number of copies.
100a.110 Assure compliance with appropriate requirements of law.
100a.111 Describe the project.
100a.112 Include a proposed project period and a timeline.
100a.113 Describe the key personnel.
100a.114 Describe the resources.
100a.115 Describe the evaluation plan.
100a.116 Demonstrate capability; include evaluation of completed project.
100a.117 Information needed for a multi-year project.
100a.118 Application for a continuation award.
100a.119 Information needed if private school students participate.

Joint Funding Simplification Procedures

100a.124 Applications and preapplications under the Joint Funding Simplification Act.

Separate Applications—Alternative Programs

100a.125 Submit a separate application to each program; exception under the Joint Funding Simplification Act.
100a.126 Application must list all programs to which it is submitted.

Group Applications

100a.127 Eligible parties may apply as a group.
100a.128 Who acts as applicant; the group agreement.
100a.129 Legal responsibilities of each member of the group.

Preapplications

100a.130 Preapplications; purpose of §§ 100a.131–100a.134.
100a.131 Consideration of a preapplication.
100a.132 The effect of not submitting a preapplication.
100a.133 Result of a preapplication.
100a.134 The basis for the preapplication decision.

Open Meeting Certification Under Certain ESEA Programs

100a.138 Open meetings; purpose of §§ 100a.139–100a.141.
100a.139 The local educational agency shall hold an open meeting.
100a.140 Give notice of the open meeting; make information available.
100a.141 Certify that open meeting was held.

State Approval Procedures

100a.150 Review procedure if State must approve applications; purpose of §§ 100a.151–100a.153.
100a.151 When an applicant under § 100a.150 must submit its application to the State; proof of submission.
100a.152 The State reviews each application.
100a.153 Deadlines for State approval.
100a.154 Effect of State approval; failure to approve.

State Comment Procedures

100a.155 Review procedure if State may comment on applications: purpose of §§ 100a.156–100a.158.
100a.156 When an applicant under § 100a.155 must submit its application to the State; proof of submission.
100a.157 The State reviews each application.
100a.158 Deadlines for State comments.
100a.159 Effect of State comments or failure to comment.
100a.160 Procedures for State approval of or comment on preapplications.

OMB Circular A–95 Clearinghouse Procedures

100a.170 Clearinghouse procedures: purpose of §§ 100a.170–100a.173.
100a.171 Notify the appropriate clearinghouses.
100a.172 Applicant shall show compliance with A–95 procedures.
100a.173 The period for clearinghouse review; the effect of not complying with Part I of OMB Circular A–95.

Development of Curricula or Instructional Materials

100a.190 Consultation.
100a.191 Consultation costs.
100a.192 Dissemination.

Subpart D—How Grants Are Made

Selection of New Projects

100a.200 How applications for new grants are selected for funding.
100a.201 How to use the selection criteria.
100a.202 Selection criterion—plan of operation.
100a.203 Selection criterion—quality of key personnel.
100a.204 Selection criterion—budget and cost effectiveness.
100a.205 Selection criterion—evaluation plan.
100a.206 Selection criterion—adequacy of resources.

Selection Procedures

100a.215 How the Education Division selects a new project: purpose of §§ 100a.216–100a.222.
100a.216 Returning an application to the applicant.
100a.217 How the Education Division selects applications for new grants.
100a.218 Applications not selected for funding.
100a.219 Exceptions to the procedures under § 100a.217.
100a.220 Procedures the Education Division uses under § 100a.219(a).
100a.221 Procedures the Education Division uses under § 100a.219(b).
100a.222 Procedures the Education Division uses under § 100a.219(c).

Procedures To Make a Grant

100a.230 How the Education Division makes a grant; purpose of §§ 100a.231–100a.236.
100a.231 Additional information.
100a.232 The cost analysis; basis for grant amount.
100a.233 Setting the amount of the grant.
100a.234 The conditions of the grant.
100a.235 The notification of grant award.
100a.236 Effect of the grant.

Approval of Multi-Year Projects

100a.250 Project period can be up to 60 months.
100a.251 The budget period.
100a.253 Continuation of a multi-year project after the first budget period.
100a.254 Continuation of a multi-year project under the Joint Funding Simplification Act.

Miscellaneous

100a.260 Allotments and reallotments.
100a.261 Extension of a project period.

Subpart E—What Conditions Must Be Met by a Grantee?

Nondiscrimination

100a.500 Federal statutes and regulations on nondiscrimination.

Project Staff

100a.510 Use of a project director.
100a.511 Waiver of requirement for a full-time project director.
100a.515 Use of consultants.
100a.516 Compensation of consultants—employees of institutions of higher education.
100a.517 Changes in key staff members.

100a.518 Minimum wage rates.
100a.519 Dual compensation of staff.

Conflict of Interest

100a.524 Conflict of interest: purpose of § 100a.525.
100a.525 Conflict of interest: participation in a project.

Allowable Costs

100a.530 General cost principles.
100a.531 Limit on total cost of a project.
100a.532 Use of funds for religion prohibited.
100a.533 Acquisition of real property; construction.
100a.534 Training grants—automatic increases for additional dependents.

Indirect Cost Rates

100a.560 General indirect cost rates; exceptions.
100a.561 Approval of indirect cost rates.
100a.562 Indirect cost rates for educational training projects.
100a.563 Restricted indirect cost rate—programs covered.
100a.564 Restricted indirect cost rate—formula.
100a.565 Administrative charge.
100a.566 Fixed charges.
100a.567 Other expenditures.
100a.568 Using the restricted indirect cost rate.

Coordination

100a.580 Coordination with other activities.
100a.581 Methods of coordination.

Evaluation

100a.590 Evaluation by the grantee.
100a.591 Federal evaluation—cooperation by the grantee.
100a.592 Federal evaluation—satisfying requirement for grantee evaluation.

Construction

100a.600 Use of a grant for construction: purpose of §§ 100a.601–100a.615.
100a.601 Applicant's assessment of environmental impact.
100a.602 Preservation of historic sites must be described in the application.
100a.603 Grantee's title to site.
100a.604 Availability of cost-sharing funds.
100a.605 Beginning the construction.
100a.606 Completing the construction.
100a.607 General considerations in designing facilities and carrying out construction.
100a.608 Areas in the facilities for cultural activities.
100a.609 Comply with safety and health standards.
100a.610 Access by the handicapped.
100a.611 Avoidance of flood hazards.
100a.612 Supervision and inspection by the grantee.
100a.613 Relocation assistance by the grantee.
100a.614 Grantee must have operational funds.
100a.615 Operation and maintenance by the grantee.

Equipment and Supplies

100a.618 Charges for use of equipment or supplies.

Publications and Copyrights

100a.620 General conditions on publication.
100a.621 Copyright policy for grantees and contractors.
100a.622 Definition of "project materials."

Inventions and Patents

100a.625 Invention and patent policy.
100a.626 Show Federal support; give papers to vest title.

Other Requirements for Certain Projects

100a.650 Participation of students enrolled in private schools.
100a.681 Protection of human research subjects.
100a.682 Treatment of animals.
100a.683 Health or safety standards for facilities.
100a.684 Day care services.

Subpart F—What Are the Administrative Responsibilities of a Grantee?

General Administrative Responsibilities

100a.700 Compliance with statutes, regulations, and applications.
100a.701 The grantee administers or supervises the project.
100a.702 Fiscal control and fund accounting procedures.
100a.703 Obligation of funds during the grant period.
100a.707 When obligations are made.
100a.708 Prohibition of subgrants.

Reports

100a.720 Financial and performance reports.
100a.721 Reports under the Joint Funding Simplification Act.

Records

100a.730 Records related to grant funds.
100a.731 Records related to compliance.
100a.732 Records related to performance.
100a.733 Records related to State approval of applications.
100a.734 Record retention period.

Privacy

100a.740 Protection of and access to student records.
100a.741 Protection of students' privacy in research and testing.

Data Collection by a Grantee

100a.750 Approval of data collection instruments.
100a.751 Procedures if approval is required.
100a.752 Responsibility for data collection.
100a.753 Confidentiality of response.
100a.754 Exemption from coverage.
100a.755 Definitions used in §§ 100a.750–100a.754.

Subpart G—What Procedures Does the Education Division Use To Get Compliance?

100a.900 Waiver of regulations prohibited.
100a.901 Suspension and termination.
100a.902 Informal procedures.
100a.903 Effective date of termination.

Authority: Sec. 408(a)(1) of Pub. L. 90–247, 88 Stat. 559, 560, as amended (20 U.S.C. 1221e–3(a)(1)), unless otherwise noted.

Subpart A—General

Regulations That Apply to Direct Grant Programs

§ 100a.1 Programs to which Part 100a applies.

The regulations in Part 100a apply to the programs of the Education Division that are listed in the following table. In addition to the name of the program, the table gives the statute that authorizes the program, the regulations that implement the program, and the number that the Catalog of Federal Domestic Assistance (CFDA) gives to the program.

(20 U.S.C. 1221e–3(a)(1))

Note.—Some programs are not currently funded. Check the application notices published each year. See § 100a.100.

Name of program	Authorizing statute	Implementing regulations (45 CFR)	CFDA No.
I. Office of the Assistant Secretary for Education			
Fund for the Improvement of Postsecondary Education	Section 404 of the General Education Provisions Act (20 U.S.C. 1221d).	Part 1501	13.925.
Capacity Building for Statistical Activities in State Educational Agencies.	Section 406 of the General Education Provisions Act (20 U.S.C. 1221-1).	Part 164	13.922.
II. National Institute of Education			
Programs of the National Institute of Education	Section 405 of the General Education Provisions Act (20 U.S.C. 1221e).	Parts 1430, 1450, 1451, 1460, 1470, 1480, 1490, and 1495.	13.950.
III. Institute of Museum Services			
Museum Services Program	Section 206 of the Museum Services Act (20 U.S.C. 965).	Part 64	13.923.

Name of program.	Authorizing statute	Implementing regulations (45 CFR)	CFDA No.
IV. Office of Education			
A. General Programs			
Program Planning and Evaluation	Section 416 of the General Education Provisions Act (20 U.S.C. 1226b).	None	None.
National Diffusion Network	Sections 303 and 376 of the Elementary and Secondary Education Act (20 U.S.C. 2943 and 3041).	Part 193	13.553.
B. Elementary and Secondary Education Programs			
School Construction in Areas Affected by Federal Activities	Public Law 81-815, except section 16 (20 U.S.C. 631–645, 647).	Part 114	13.477.
Entitlements for Handicapped Children	Section 3(d)(2)(C) of Public Law 81-874 (20 U.S.C. 236).	Part 115, Subpart H	13.478.
School Expenditures and Construction in Cases of Certain Disasters.	Sections 7 and 16 of Public Law 81-815 (20 U.S.C. 241-1 and 646).	Part 112	13.477 and 13.478.
Coordination of Migrant Education	Section 143 of the Elementary and Secondary Education Act (20 U.S.C. 2763).	None	None.
Transition of Neglected or Delinquent Children	Section 153 of the Elementary and Secondary Education Act (20 U.S.C. 2783).	None	13.431.
Basic Skills Improvement—National Program	Title II–A of the Elementary and Secondary Education Act (20 U.S.C. 2881–2890).	Part 162	13.599.
Special Projects for Improving Basic Skills	Title II–C of the Elementary and Secondary Education Act (20 U.S.C. 2911–2912).	Part 162	13.599.
Special Projects	Title III–A of the Elementary and Secondary Education Act (20 U.S.C. 2941–2943).	None	None.
Metric Education	Title III–B of the Elementary and Secondary Education Act (20 U.S.C. 2951–2954).	Part 161b	13.561.
Arts Education	Title III–C of the Elementary and Secondary Education Act (20 U.S.C. 2961–2963).	Part 161c	13.566.
Preschool Partnership	Title III–D of the Elementary and Secondary Education Act (20 U.S.C. 2971).	Part 161d	None.
Consumers' Education	Title III–E of the Elementary and Secondary Education Act (20 U.S.C. 2981–2986).	Part 161e	13.564.
Youth Employment	Title III–F of the Elementary and Secondary Education Act (20 U.S.C. 2991–2992).	Part 161f	None.
Law-Related Education	Title III–G of the Elementary and Secondary Education Act (20 U.S.C. 3001–3003).	Part 161g	13.693.
Environmental Education	Title III–H of the Elementary and Secondary Education Act (20 U.S.C. 3011–3018).	Part 161h	13.522.
Health Education	Title III–I of the Elementary and Secondary Education Act (20 U.S.C. 3021–3024).	Part 161i	None.
Correction Education	Title III–J of the Elementary and Secondary Education Act (20 U.S.C. 3031–3034).	Part 161j	None.
Dissemination of Information	Title III–K of the Elementary and Secondary Education Act (20 U.S.C. 3041).	None	None.
Biomedical Sciences	Title III–L of the Elementary and Secondary Education Act (20 U.S.C. 3051–3057).	Part 161l	13.691.
Population Education	Title III–M of the Elementary and Secondary Education Act (20 U.S.C. 3061–3062).	Part 161m	None.
Federal Financial Assistance for Strengthening State Departments of Education—Special Project Grants.	Section 505 of the Elementary and Secondary Education Act (as in effect Sept. 30, 1978).	See 43 FR 57254 (December 7, 1978)	None.
Comprehensive Educational Planning and Evaluation	Sections 531–534 of the Elementary and Secondary Education Act (as in effect Sept. 30, 1978).	See 43 FR 57254 (December 7, 1978)	None.
Bilingual Education	Title VII of the Elementary and Secondary Education Act (20 U.S.C. 3221–3261).	Parts 123, 123a, and 123b	13.403.
Financial Assistance for Demonstration Projects for Reducing School Dropouts.	Section 807 of the Elementary and Secondary Education Act (as in effect Sept. 30, 1978).	See 43 FR 57254 (December 7, 1978)	None.
Grants for Demonstration Projects to Improve School Health and Nutrition Services for Children from Low-Income Families.	Section 808 of the Elementary and Secondary Education Act (as in effect Sept. 30, 1978).	See 43 FR 57254 (December 7, 1978)	None.
Community Schools and Comprehensive Community Education.	Sections 809–813 of the Elementary and Secondary Education Act (20 U.S.C. 3289–3293).	Part 160c, Subparts C, D, and E	13.563.
Gifted and Talented Children	Section 905 of the Elementary and Secondary Education Act (20 U.S.C. 3315).	195	13.562.
Educational Proficiency Standards	Title IX–B of the Elementary and Secondary Education Act (20 U.S.C. 3331–3332).	None	None.
Women's Educational Equity	Title IX–C of the Elementary and Secondary Education Act (20 U.S.C. 3341–3348).	Part 160f	13.565.
Safe Schools	Title IX–D of the Elementary and Secondary Education Act (20 U.S.C. 3351–3354).	Part 161h	None.
Ethnic Heritage Studies Program	Title IX–E of the Elementary and Secondary Education Act (20 U.S.C. 3361–3367).	Part 184	13.549.
Follow Through Program	Sections 551–556 of the Economic Opportunity Act of 1964 (42 U.S.C. 2929–2923c).	Part 158	13.433.
Guidance and Counseling	Title III–D of the Education Amendments of 1976 (20 U.S.C. 2531–2534).	Part 191	13.577
C. Education of the Handicapped Programs			
Regional Resource Centers	Section 621 of the Education of the Handicapped Act (20 U.S.C. 1421).	Part 121b	13.450.
Centers and Services for Deaf-Blind Children	Section 622 of the Education of the Handicapped Act (20 U.S.C. 1422).	Part 121c	13.445.
Early Education for Handicapped Children	Section 623 of the Education of the Handicapped Act (20 U.S.C. 1423).	Part 121d	13.444.
Severely Handicapped Children	Section 624 of the Education of the Handicapped Act (20 U.S.C. 1424).	Part 121e	13.568.
Auxiliary Activities	Section 624 of the Education of the Handicapped Act (20 U.S.C. 1424).	Part 121e	None.
Training Personnel for the Education of the Handicapped	Sections 631, 632, and 634 of the Education of the Handicapped Act (20 U.S.C. 1431, 1432, 1434).	Part 121f	13.451.

Name of program	Authorizing statute	Implementing regulations (45 CFR)	CFDA No.
Recruitment of Personnel and Dissemination of Information ...	Section 633 of the Education of the Handicapped Act (20 U.S.C. 1433).	Part 121g	13.452.
Research in the Education of the Handicapped	Part E of the Education of the Handicapped Act (20 U.S.C. 1441–1444).	Part 121h	13.443.
Instructional Media for the Handicapped	Part F of the Education of the Handicapped Act (20 U.S.C. 1451–1454).	Part 121i	13.446.
Regional Education Programs for Handicapped Persons	Section 625 of the Education of the Handicapped Act (20 U.S.C. 1424a).	Part 121k	13.560.
Removal of Architectural Barriers to the Handicapped	Section 607 of the Education of the Handicapped Act (20 U.S.C. 1406).	None	None.
D. Occupational and Adult Education Programs			
Commissioner's Discretionary Programs of Vocational Education.	Title I-B and Section 103(a)(1)(B) of the Vocational Education Act (20 U.S.C. 2301–2461).	Part 105	13.498, 13.556, 13.586, 13.587, and 13.588.
Career Education—Model Programs	Section 10 of the Career Education Incentive Act (20 U.S.C. 2609).	161a	None.
Postsecondary Career Education Demonstration Program	Section 11 of the Career Education Incentive Act (20 U.S.C. 2610).	Part 161a	None.
Career Education Information Program	Section 12 of the Career Education Incentive Act (20 U.S.C. 2611).	Part 161a	None.
Adult Education Programs	Sections 309, 317, and 318 of the Adult Education Act (20 U.S.C. 1207a, 1211b, and 1211c).	Part 166	None.
E. Higher Education Programs			
College Library Resources Program	Title II-A of the Higher Education Act (20 U.S.C. 1021–1028)..	Part 131	13.406.
Grants for Training in Librarianship	Section 222 of the Higher Education Act (20 U.S.C. 1031–1033).	Part 132	13.468.
Library Resources Demonstration	Section 223 of the Higher Education Act (20 U.S.C. 1034).	Part 133	13.475.
Strengthening Research Library Resources	Title II-C of the Higher Education Act (20 U.S.C. 1041–1046).	Part 136	13.576.
Modern Foreign Language and Area Studies (except Foreign Language and Area Studies Fellowships).	Title VI of the National Defense Education Act (except sections 511(b) and 603) (20 U.S.C. 511–513).	Part 146 (except Subpart D)	13.435 and 13.436.
Higher Education Programs in Modern Foreign Language Training and Area Studies.	Section 102(b)(6) of the Mutual Educational and Cultural Exchange Act (22 U.S.C. 2452(b)(6)).	Part 149	13.436, 13.439, 13.440, and 13.441.
Citizen Education for Cultural Understanding Program	Section 603 of the National Defense Education Act (20 U.S.C. 512a).	Part 146a	None.
Educational Opportunity Centers	Sections 417A and 417B of the Higher Education Act (20 U.S.C. 1070d and 1070d–1).	Part 154	13.543.
Upward Bound Program	Sections 417A and 417B of the Higher Education Act (20 U.S.C. 1070d and 1070d–1).	Part 155	13.492.
Special Services for Disadvantaged Students	Sections 417A and 417B of the Higher Education Act (20 U.S.C. 1070d and 1070d–1).	Part 157	13.482.
Talent Search Program	Sections 417A and 417B of the Higher Education Act (20 U.S.C. 1070d and 1070d–1).	Part 159	13.488.
Strengthening Developing Institutions Program	Title III of the Higher Education Act (20 U.S.C. 1051–1056).	Part 169	13.454.
Training for Higher Education Personnel	Section 533 of the Higher Education Act (20 U.S.C. 1119a–1).	Part 196	13.417.
Financial Assistance for Construction of Higher Education Facilities (except Loans for Construction of Academic Facilities and Annual Interest Grants for Construction of Academic Facilities)..	Parts A and B of Title VII of the Higher Education Act (20 U.S.C. 1132a–1132b–1).	See 43 FR 57254 (December 7, 1978)	
Instructional Equipment Grants for Institutions of Higher Education.	Title VI of the Higher Education Act (20 U.S.C. 1121–1129a).	See 43 FR 57254 (December 7, 1978)	13.518.
Financial Assistance for Community Service and Continuing Education Programs—Special Programs and Projects.	Section 106 of the Higher Education Act (20 U.S.C. 1005a).	Part 173, Subpart C	13.557.
Cooperative Education Programs	Title VIII of the Higher Education Act (20 U.S.C. 1133–1133b).	Part 182	13.510.
Veteran's Cost-of-Instruction Payments to Institutions of Higher Education.	Section 420 of the Higher Education Act (20 U.S.C. 1070e–1).	Part 189	13.540.
Public Service Education Program—Public Service Institutional Grants.	Sections 901–904 of the Higher Education Act (20 U.S.C. 1134–1134c).	Part 194, Subpart A	13.555.
Graduate and Professional Study Institutional Grants	Sections 901–904 of the Higher Education Act (20 U.S.C. 1134–1134b).	Part 179 (except Subpart C)	13.580.
State Postsecondary Education Commissions Program—Inter-state Planning.	Section 1203(c) of the Higher Education Act (20 U.S.C. 1142b(c)).	None	13.550.
Community Colleges	Title X of the Higher Education Act (20 U.S.C. 1135 through 1135c–1).	None	None.
F. Other Programs			
Alcohol and Drug Abuse Education Program	Public Law 93–422 (20 U.S.C. 1001–1007)	Part 182a	13.420.
Television Program Assistance	Section 1527 of the Education Amendments of 1978 (20 U.S.C. 1221j).	None	None.
Teacher Corps Program	Section V–A of the Higher Education Act (20 U.S.C. 1101–1107a).	Part 172	13.489.
Teacher Centers Program	Section 532 of the Higher Education Act (20 U.S.C. 1119a).	Part 197	13.416.
Territorial Teacher Training	Section 1525 of the Education Amendments of 1978..	None	None.
Education Information Management System	Section 400A (f) and (g) of the General Education Provisions Act (20 U.S.C. 1221–3 (f) and (g)).	None	None.
Indian Education Act (Part A)	Title IV–A of Public Law 92–318 (20 U.S.C. 241aa–241ff)..	Parts 186 and 186a	13.534 and 13.551.

Name of program	Authorizing statute	Implementing regulations (45 CFR)	CFDA No.
Indian Education Act (Part B) (except the Indian Fellowship Program)..	Title IV–B of Public Law 92–318 (20 U.S.C. 887c–1, 3385).	Parts 186 and 186b	13.535.
Indian Education Act (Part C)	Title IV–C of Public Law 92–318 (20 U.S.C. 1211a)	Parts 186 and 186c	13.536.
Desegregation of Public Education	Title IV of the Civil Rights Act of 1964 (42 U.S.C. 2000c through 2000c–5).	Part 180	13.405.
Emergency School Aid	Title VI of the Elementary and Secondary Education Act (20 U.S.C. 3191–3207).	Part 185	13.531, 13.532, 13.681, 13.682, 13.683, 13.684, 13.685, 13.687, and 13.688.
Racially Isolated School Districts	Section 1522 of the Education Amendments of 1978..	None	None.

§ 100a.2 Exceptions in program regulations to Part 100a.

If a program has regulations that are not consistent with Part 100a, the implementing regulations for that program identify the sections of Part 100a that do not apply.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.3 HEW general grant regulations apply to these programs.

The HEW general grant regulations in 45 CFR Part 74 of this title apply to the programs covered by this part. To find subjects covered under 45 CFR Part 74, look in the table of contents at the beginning of 45 CFR Part 74.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.4 Education Division contracts.

(a) A contract of the Education Division is governed by:

(1) Chapters 1 and 3 of Title 41 of the Code of Federal Regulations;

(2) Any applicable program regulations; and

(3) The request for proposals for the procurement, if any, referenced in *Commerce Business Daily*.

(b) The regulations in Part 100a do not apply to a contract of the Education Division unless regulations in Part 100a or a program's regulations specifically provide otherwise.

(20 U.S.C. 1221e–3(a)(1))

Eligibility for a Grant

§ 100a.50 How to find out whether you are eligible.

Eligibility to apply for a grant under a program of the Education Division is governed by the authorizing statute and implementing regulations for that program. The table in § 100a.1 references the statutes and regulations that apply to the direct grant programs of the Education Division.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.51 How to prove nonprofit status.

(a) Under some programs, an applicant must show that it is a nonprofit organization. (See the definition of "nonprofit" in 45 CFR 100c.1.)

(b) An applicant may show that it is a nonprofit organization by any of the following means:

(1) Proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under Section 501(c)(3) of the Internal Revenue Code;

(2) A statement from a State taxing body or the State attorney general certifying that—

(i) The organization is a nonprofit organization operating within the State; and

(ii) No part of its net earnings may lawfully benefit any private shareholder or individual;

(3) A certified copy of the applicant's certificate of incorporation or similar document if it clearly establishes the nonprofit status of the applicant; or

(4) Any item described in paragraphs (b) (1) through (3) of this section if that item applies to a State or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate.

(20 U.S.C. 1221e–3(a)(1))

Subpart B—[Reserved]

Subpart C—How To Apply for a Grant

The Application Notice

§ 100a.100 Publication of an application notice; content of the notice.

(a) Each fiscal year each appropriate official of the Education Division publishes application notices in the **Federal Register** that explain what kind of assistance is available under the programs that he or she administers.

(b) The application notice for a program explains one or more of the following:

(1) How to apply for a new grant.

(2) How to apply for a continuation award for an existing project already being funded under that program.

(3) If preapplications are used under the program, how to preapply for a new grant.

(20 U.S.C. 1221e–3(a)(1))

Note.—The term "appropriate official of the Education Division" is defined in 45 CFR 100c.1 to mean the official that has overall administrative responsibility for an Education Division program. Depending on the statutory authority for a given program, that official is—

(a) The Assistant Secretary;

(b) The Commissioner;

(c) The Director of the National Institute of Education; or

(d) The Director of the Institute of Museum Services.

§ 100a.101 Information in the application notice that helps an applicant apply.

(a) The application notice for each program gives important information that can help an applicant. The information usually includes—

(1) How an applicant can get an information package that contains detailed information about the program

and the application form that the applicant must use;

(2) Where in the Education Division an applicant must send its application;

(3) The amount of funds available for new grants;

(4) The number of new grants the Education Division expects to make under the program;

(5) The expected budget period, and the average amount of funding that the Education Division will provide to a new grant under the program;

(6) If the programs to approve multi-year projects, the project period that the Education Division will approve under the program;

(7) The amount of funds available for continuation awards under the program;

(8) The number continuation awards the Education Division expects to make under the program;

(9) The average amount of funding that the Education Division expects to provide in these continuation awards; and

(10) A reference to the regulations that apply to the program.

(b) If the appropriate official of the Education Division either requires or permits preapplications under a program, an application notice for the program explains how an applicant can get the preapplication form.

(20 U.S.C. 1221e-3(a)(1))

Cross-reference.—See 45 CFR 100c.1—definitions of "budget period" and "project period."

§ 100a.102 Deadline date for applications.

(a) The application notice for a program sets a deadline date for applications to be mailed or hand delivered to the Education Division.

(b) If an applicant wants a new grant, the applicant shall—

(1) Mail the application to the address specified in the application notice on or before the deadline date; or

(2) Hand deliver the application to the address specified in the application notice by 4:30 p.m. (Washington, D.C. time) on the deadline date.

(c) If an applicant wants a continuation award, the applicant, to be assured of consideration, shall—

(1) Mail the application to the address specified in the application notice on or before the deadline date; or

(2) Hand deliver the application to the address specified in the application notice by 4:30 p.m. (Washington, D.C. time) on the deadline date.

(d) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the appropriate official of the Education Division.

(e) If an application is mailed through the U.S. Postal Service, the appropriate official does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

(20 U.S.C. 1221e-3(a)(1))

Note.—The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

§ 100a.103 Deadline date for preapplications.

(a) If the appropriate official of the Education Division invites or requires preapplications under a program, the application notice for the program sets a deadline date for preapplications.

(b) An applicant shall submit its preapplication in accordance with the procedures for applications in § 100a.102(b) and (d).

(20 U.S.C. 1221e-3(a)(1))

§ 100a.104 Applicants must meet procedural rules.

The appropriate official of the Education Division may make a grant only to an eligible party that submits an application.

(20 U.S.C. 1221e-3(a)(1))

Application Contents

Cross-reference.—See § 100a.200 for a description of discretionary and formula grant programs.

§ 100a.107 Applications for new grants under a discretionary grant program.

In an application for a new grant under a discretionary grant program, the applicant shall include—

(a) Information that addresses each selection criterion that applies to the program;

(b) The information required by the following sections of EDGAR—

(1) Section 100a.110;

(2) Section 100a.112;

(3) Section 100a.116;

(4) Section 100a.117;

(5) The regulations noted after § 100a.118, if appropriate; and

(6) Section 100a.119, if appropriate; and

(c) All other information that is required under the particular program.

(20 U.S.C. 1221e-3(a)(1))

Cross-reference.—See 45 CFR Part 74, Subpart N—Forms for Applying for Grants.

§ 100a.108 Applications for new grants under a formula grant program.

In an application for a new grant under a formula grant program, the applicant shall include—

(a) The information required by the following sections of EDGAR—

(1) Sections 100a.110–100a.117;

(2) The regulations noted after § 100a.118 if appropriate; and

(3) Section 100a.119, if appropriate; and

(b) All other information that is required under the particular program.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.109 Changes to application; number of copies.

(a) Each applicant shall submit an original and two copies of its application to the Education Division, including any information that the applicant supplies voluntarily.

(b) An applicant may make changes to its application on or before the deadline date for submitting applications under the program.

(20 U.S.C. 1221e-3(a)(1))

Cross-reference.—See § 100a.200 How applications for new grants are selected for funding.

§ 100a.110 Assure compliance with appropriate requirements of law.

An application must include an assurance that a grantee will comply with the requirements imposed by the appropriate official of the Education Division concerning—

(a) Special requirements of law;

(b) Program requirements; and

(c) Administrative requirements.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.111 Describe the project.

An application must describe the project in detail. The description must include—

(a) The purpose of the project;

(b) The design of the project and the plan of management for the project;

(c) Each objective of the project and how the applicant plans to use its resources and personnel to achieve each objective;

(d) The characteristics of intended project participants and beneficiaries, including the extent to which intended participants and beneficiaries are persons who are members of groups that have been traditionally underrepresented, such as—

(1) Members of racial or ethnic minority groups;

(2) Women;

(3) Handicapped persons; and

(4) The elderly; and

(e) The expected effects of the project on persons who are members of groups that have been traditionally underrepresented.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.112 Include a proposed project period and a timeline.

(a) An application must propose a project period for the project.

(b) An application must describe when, in each budget period of the project, the applicant plans to meet each objective of the project.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.113 Describe the key personnel.

An application must include the name and qualifications of each key person in the proposed project. The following information must be included:

(a) The name and qualifications of the project director (if one is to be used.)

(b) The name and qualifications of each of any other key personnel in the project.

(c) The time that each person referred to in paragraphs (a) and (b) of this section plans to commit to the proposed project.

(d) If the name of the project director or any other key person is not known to the applicant when it submits the application, the application must specify the minimum qualifications for that person. This paragraph does not allow an applicant to omit the name or qualifications of the principal investigator for a proposed research project.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.114 Describe the resources.

An application must describe the resources the applicant plans to devote to the project, including—

(a) Facilities; and

(b) Equipment and supplies.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.115 Describe the evaluation plan.

An application must include a description of the applicant's plan to evaluate the project under § 100a.590, the authorizing statute of the program, and the implementing regulations of the program.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.116 Demonstrate capability; include evaluation of completed project.

(a) An application must include information to demonstrate the applicant's capability to—

(1) Conduct the project; and

(2) Meet the needs of the persons (if any) that the applicant plans to serve with the project.

(b) If an applicant wants a grant for a new project that furthers the objectives of a project already completed by the applicant, the applicant shall include any existing evaluation of the completed project.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.117 Information needed for a multi-year project.

An applicant that proposes a multi-year project shall include in its application—

(a) Information that shows why a multi-year project is needed;

(b) A budget for the first budget period of the project; and

(c) An estimate of the Federal funds needed for each budget period of the project after the first budget period.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.118 Application for a continuation award.

(a) An applicant shall comply with paragraph (b) of this section if—

(1) The applicant wants funds to continue a project already approved on a multi-year basis;

(2) The applicant is about to complete one or more of the budget periods; and

(3) The budget period for which the applicant wants a continuation award is within the approved project period.

(b) An applicant for a continuation award shall submit the following:

(1) A revised face page (standard form 424) and revisions to any other affected pages of the approved application.

(2) A budget that covers the next budget period, and an estimate of the amount of funds that will remain unobligated at the end of the current budget period.

(3) An estimate of the Federal funds needed for each budget period that comes after the next budget period.

(c) The appropriate official of the Education Division may also require the applicant to submit a report of project accomplishments to date.

(20 U.S.C. 1221e-3(a)(1))

Cross-reference.—See § 100a.117 Information needed for a multi-year project, and §§ 100a.250–100a.253 Approval of multi-year projects.

Note.—Other sections in this part may require an applicant to put information in its application. However, these sections are not included here because they either—

(1) Apply only to a limited number of programs; or

(2) Apply only under specified circumstances.

A list of these sections follows:

§ 100a.128 Who acts as applicant; the group agreement.
§ 100a.141 Certify that open meeting was held.
§ 100a.151 When an applicant under § 100a.150 must submit its application to the State; proof of submission.
§ 100a.156 When an applicant under § 100a.155 must submit its application to the State; proof of submission.
§ 100a.160 Procedures for State approval of or comment on preapplications.
§ 100a.172 Applicant shall show compliance with A–95 procedures.
§ 100a.192 Dissemination.
§ 100a.601 Applicant's assessment of environmental impact.
§ 100a.602 Preservation of historic sites must be described in the application.

§ 100a.119 Information needed if private school students participate.

If a program requires the applicant to provide an opportunity for participation of students enrolled in private schools, the application must include the information required of subgrantees under 45 CFR 100b.656.

(20 U.S.C. 1221e-3(a)(1))

Joint Funding Simplification Procedures

§ 100a.124 Applications and preapplications under the Joint Funding Simplification Act.

(a) The Joint Funding Simplification Act permits a State or local government or nonprofit organization to seek Federal funds from more than one program in a single application. An applicant shall use the Joint Funding Simplification Act procedures specified in this section if the applicant wants a grant that is funded in part from one Education Division direct grant program and funded in part from—

(1) One or more other Education Division direct grant programs;

(2) One or more other Federal agencies; or

(3) One or more State agencies.

(b) An applicant for a grant under this Act shall comply with the requirements in OMB Circular A–111 and the supplemental procedures in this part. The OMB circular was published in the **Federal Register** on July 30, 1976 (41 FR 32040). An applicant may obtain a copy of this circular by addressing its request to: Joint Funding Information, Director, Division of Regulations Management, Room 2129, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

(c) The supplemental procedures in this part are in—

(1) Section 100a.125;
(2) Section 100a.219(b);
(3) Section 100a.221;
(4) Section 100a.250(b);
(5) Section 100a.254; and
(6) Section 100a.721.

(d) An applicant for a grant under the Joint Funding Simplification Act does not have to comply with any deadline date for applications or preapplications under an Education Division program from which the applicant seeks funds. However, the appropriate official of the Education Division does not reserve any program funds for jointly funded grants. For this reason, the appropriate official encourages an applicant for a jointly funded grant to apply before the fiscal year in which the grant is to be made or at least before the deadline for applications under the program for that fiscal year.

(42 U.S.C. 4252(a))

Separate Applications—Alternative Programs

§ 100a.125 Submit a separate application to each program; exception under the Joint Funding Simplification Act.

(a) An applicant shall submit a separate application to each program under which it wants a grant.

(b) If an applicant wants a grant under the Joint Funding Simplification Act, the applicant shall submit a single application under the procedures in OMB Circular A–111.

(20 U.S.C. 1221e–3(a)(1); 42 U.S.C. 4252(a))

§ 100a.126 Application must list all programs to which it is submitted.

If an applicant is submitting an application for the same project under more than one Federal program, the applicant shall list these programs in its application. The appropriate official of the Education Division uses this information to avoid duplicate grants for the same project.

(20 U.S.C. 1221e–3(a)(1))

Group Applications

§ 100a.127 Eligible parties may apply as a group.

(a) Eligible parties may apply as a group for a grant.

(b) Depending on the program under which a group of eligible parties seeks assistance, the term used to refer to the group may vary. The list that follows contains some of the terms used to identify a group of eligible parties:

(1) Combination of institutions of higher education.

(2) Consortium.

(3) Joint applicants.

(4) Cooperative arrangements.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.128 Who acts as applicant; the group agreement.

(a) If a group of eligible parties applies for a grant, the members of the group shall either—

(1) Designate one member of the group to apply for the grant; or

(2) Establish a separate, eligible legal entity to apply for the grant.

(b) The members of the group shall enter into an agreement that—

(1) Details the activities that each member of the group plans to perform; and

(2) Binds each member of the group to every statement and assurance made by the applicant in the application.

(c) The applicant shall submit the agreement with its application.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.129 Legal responsibilities of each member of the group.

(a) If the appropriate official of the Education Division makes a grant to a group of eligible applicants, the applicant for the group is the grantee and is legally responsible for—

(1) The use of all grant funds; and

(2) Ensuring that the project is carried out by the group in accordance with Federal requirements.

(b) Each member of the group is legally responsible to—

(1) Carry out the activities it agrees to perform; and

(2) Use the funds that it receives under the agreement in accordance with Federal requirements that apply to the grant.

(20 U.S.C. 1221e–3(a)(1))

Preapplications

§ 100a.130 Preapplications; purpose of §§ 100a.131–100a.134.

The appropriate official of the Education Division considers a preapplication under the procedures in §§ 100a.131–100a.134.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.131 Consideration of a preapplication.

The appropriate official of the Education Division is required to consider a preapplication if—

(a) The applicant complies with the procedural rules that govern submission of the preapplication; and

(b)(1) The preapplication is submitted in response to an application notice that invites or requires preapplications; or

(2) The preapplication is submitted by a government, as defined in 45 CFR 74.3.

Cross-reference—See Subpart N of 45 CFR Part 74.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.132 The effect of not submitting a preapplication.

(a) If the appropriate official of the Education Division invites but does not require preapplications under a program, an applicant may apply for a grant under the program even if the applicant did not preapply.

(b) If the appropriate official of the Education Division requires preapplications under a program and an applicant does not preapply, the applicant may not apply for a grant under the program.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.133 Result of a preapplication.

(a) If an applicant submits a preapplication under a program, the appropriate official of the Education Division—

(1) Informs the applicant that it is eligible and encourages it to apply for a grant under the program;

(2) Informs the applicant that it is eligible but does not encourage it to apply for a grant under the program; or

(3) Informs the applicant that it is ineligible for assistance under the program, and explains why the applicant is ineligible.

(b) An applicant may apply under a program even if the official does not encourage it to apply.

(20 U.S.C. 1221e–3(a)(1))

Cross-reference.—See § 100a.216 Returning an application to an applicant.

§ 100a.134 The basis for the preapplication decision.

To decided whether to encourage a preapplicant to apply, the appropriate official of the Education Division uses the same criteria that the official uses to select an applicant for a grant. (See §§ 100a.200–100a.206 for a description of how selection criteria work.)

(20 U.S.C. 1221e–3(a)(1))

Open Meeting Certification Under Certain ESEA Programs

§ 100a.138 Open meetings; purpose of §§ 100a.139–100a.141.

(a) Sections 100a.139–100a.141 implement Section 1006 of the Elementary and Secondary Education Act of 1965 (ESEA), as amended.

(b) Section 1006 requires a local educational agency that submits an application under certain ESEA programs to certify that it has held an open meeting regarding the contents of the application.

(c) Section 1006 applies to each ESEA program listed in § 100a.1.

(20 U.S.C. 887e)

§ 100a.139 The local educational agency shall hold an open meeting.

(a) If a local educational agency applies for a grant under an ESEA program listed in § 100a.1, the agency shall hold at least one meeting open to the public.

(b) The agency shall inform the people who attend the meeting of—

(1) The ESEA program under which the agency wants a grant;

(2) The kinds of activities that are authorized under the statute and the program regulations; and

(3) The activities for which the agency wants the grant.

(c) The agency shall give each person who attends the meeting an opportunity to comment or make recommendations on the agency's proposed activities.

(20 U.S.C. 887e)

§ 100a.140 Give notice of the open meeting; make information available.

(a) If a local educational agency must hold an open meeting under § 100a.139, the agency shall give notice of the time, place, and purpose of the meeting.

(b) The agency shall give notice that—

(1) Is likely to reach the general public in the area served by the project; and

(2) Gives the public time to prepare for the meeting.

(c) The agency shall take steps to ensure that persons who are members of groups that have been traditionally underrepresented receive the notice required by paragraph (b)(1) and that these persons are encouraged to participate in the meeting. These persons include—

(1) Members of racial or ethnic minority groups;

(2) Women;

(3) Handicapped persons; and

(4) The elderly.

(d) If students enrolled in private schools may participate under the program, the agency shall take steps to ensure that appropriate representatives of those children receive notice of and are encouraged to participate in the meeting.

(e) The agency shall make the following material available for inspection by the public at least 24 hours before the open meeting begins:

(1) An outline of the information described in § 100a.139(b).

(2) A draft copy of the agency's application, if the application has been prepared.

(20 U.S.C. 887e)

§ 100a.141 Certify that open meeting was held.

If a local educational agency must hold an open meeting under § 100a.139, the agency shall certify in its application that—

(a) The agency held at least one open meeting under § 100a.139;

(b) The agency gave notice of each open meeting in accordance with § 100a.140 (a) and (b);

(c) The agency made information available in accordance with § 100a.140(c)–(e);

(d) The agency gave meaningful consideration to any comments or recommendations that it received at each open meeting; and

(e) The agency amended its application, as appropriate, in light of those comments and recommendations.

(20 U.S.C. 887e)

State Approval Procedures

§ 100a.150 Review procedure if State must approve applications; purpose of §§ 100a.151–100a.153.

If the authorizing statute for a program requires the State to approve each application, the State and the applicant shall use the procedures in §§ 100a.151–100a.153.

(20 U.S.C. 1221e–3(a)(1))

Cross-reference.—See § 100a.160 Procedures for State approval of or comment on preapplications; and § 100a.733 Records related to State approval of applications.

§ 100a.151 When an applicant under § 100a.150 must submit its application to the State; proof of submission.

(a) Each applicant under a program covered by § 100a.150 of this Part shall submit a copy of its application to the State at least 15 days before the deadline date for submitting the application to the Education Division.

(b) The applicant shall attach to its application a copy of its letter that requests the State to approve the application.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.152 The State reviews each application.

Each State that receives an application under § 100a.151 of this Part shall review the application to decide if the State wishes to approve or disapprove the application.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.153 Deadlines for State approval.

(a) The appropriate official of the Education Division may publish in the **Federal Register** a notice that establishes a deadline date for receipt of State approvals of applications under a program covered by § 100a.150.

(b) If a State approves an application, the appropriate State official shall—

(1) Sign a statement that approves the application; and

(2) Submit the application and the statement by the deadline date for State approvals. The procedures in § 100a.102(c) (how to meet a deadline date) apply to this submission.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.154 Effect of State approval; failure to approve.

(a) If a State approves an application on or before the deadline date for State approval, the appropriate official of the Education Division may select that project for a grant.

(b) If a State does not approve an application on or before the deadline date for State approval, the appropriate official of the Education Division does not select that project for a grant.

(20 U.S.C. 1221e–3(a)(1))

State Comment Procedures

§ 100a.155 Review procedure if State may comment on applications: purpose of §§ 100a.156–100a.158.

If the authorizing statute or implementing regulations for a program require that a State be given an opportunity to comment on each application, the State and the applicant shall use the procedures in §§ 100a.156–100a.158.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.156 When an applicant under § 100a.155 must submit its application to the State; proof of submission.

(a) Each applicant under a program covered by § 100a.155 shall submit a copy of its application to the State on or before the deadline date for submitting its application to the Education Division.

(b) The applicant shall attach to its application a copy of its letter that requests the State to comment on the application.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.157 The State reviews each application.

A State that receives an application under § 100a.156 may review and comment on the application.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.158 Deadlines for State comments.

(a) The appropriate official of the Education Division may establish a deadline date for receipt of State comments on applications.

(b) The State shall make its comments in a written statement signed by an appropriate State official.

(c) The appropriate State official shall submit comments to the appropriate official of the Education Division by the deadline date for State comments. The procedures in § 100a.102 (b) and (d) (how to meet a deadline) of this Part apply to this submission.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.159 Effect of State comments or failure to comment.

(a) The appropriate official of the Education Division considers those comments of the State that relate to—

(1) Any selection criterion that applies under the program; or

(2) Any other matter that affects the selection of projects for funding under the program.

(b) If the State fails to comment on an application on or before the deadline date for the appropriate program, the State waives its right to comment.

(c) If the applicant does not give the State an opportunity to comment, the appropriate official of the Education Division does not select that project for a grant.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.160 Procedures for State approval of or comment on preapplications.

(a) If the authorizing statute for a program requires that a State approve each preapplication, the State and the applicant shall use the approval procedures in §§ 100a.151–100a.153 for the preapplication.

(b) If the authorizing statute or implementing regulations for a program require that a State be given an opportunity to comment on each preapplication, the State and the applicant shall use the comment procedures in §§ 100a.156–100a.158 for the preapplication.

(20 U.S.C. 1221e-3(a)(1))

OMB Circular A-95 Clearinghouse Procedures

§ 100a.170 Clearinghouse procedures: purpose of §§ 100a.170–100a.173.

(a) Sections 100a.170–100a.173 implement Part I of OMB circular A-95.

(b) Part I of OMB Circular A-95 requires an applicant under certain Federal programs to notify the appropriate State and areawide clearinghouses of the applicant's intent to apply. The clearinghouses may comment on the application.

(c) The following programs listed in § 100a.1 are covered by Part I of OMB Circular A-95:

Name of program	Authorizing statute	Implementing regulations	CFDA No.
Environmental Education	Title III-H of the Elementary and Secondary Education Act (20 U.S.C. 3011).	Part 161h	13.522
Follow Through Program	Sections 551-556 of the Economic Opportunity Act of 1964 (42 U.S.C. 2929-2929e).	Part 158	13.433
Model Programs under the Research in the Education of the Handicapped Program.	Section 641 of the Education of the Handicapped Act (20 U.S.C. 1441).	Part 121h	13.443
Community Service and Continuing Education Programs—Special Programs and Projects.	Section 106 of Title I of the Higher Education Act of 1965 (20 U.S.C. 1005a).	Part 173, Subpart C.	13.557
Financial Assistance for Construction of Higher Education Facilities (except Loans for Construction of Academic Facilities and Annual Interest Grants for Construction of Academic Facilities) (20 U.S.C. 1221e-3(a)(1)).	Parts A and B of Title VII of the Higher Education Act (20 U.S.C. 1132a-1132b-1).	See 43 FR 57254 (Dec. 7, 1978).	....

§ 100a.171 Notify the appropriate clearinghouses.

(a) An applicant under a program listed in § 100a.170 shall include in its notice to the clearinghouses a summary of the project.

(b) If a clearinghouse to which a notice is submitted has specified what information is to be included in a summary, the applicant shall provide that information.

(c) If a clearinghouse to which a notice is submitted has not specified what information is to be included in a summary, the applicant shall provide the following information:

(1) The identity of the applicant.

(2) The geographic location of the proposed project (including a map, if appropriate).

(3) A brief description of the proposed project that helps the clearinghouses identify any State and local agencies that have plans or projects that may be affected by the project. The description must include—

(i) The type of project;

(ii) The purpose of the project;

(iii) The general size of the project;

(iv) The estimated cost of the project;

(v) The beneficiaries of the project; and

(vi) Any other information that will help the clearinghouses identify affected agencies.

(4) A statement that shows whether the applicant must prepare an Environmental Impact Statement.

(5) The name of the program and the Catalog of Federal Domestic Assistance number for the program.

(6) The date the applicant expects to submit its application to the Education Division.

(d) If an applicant uses the preapplication procedure in this subpart, the applicant shall submit a copy of the preapplication to the appropriate clearinghouses on the same date it submits the preapplication to the Education Division.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.172 Applicant shall show compliance with A-95 procedures.

An applicant under a program listed in § 100a.170 shall include either of the following in its application—

(a)(1) The comments of each clearinghouse that commented on the application; and

(2) A statement that the applicant considered those comments before submitting the application to the Education Division; or

(b) A statement that the applicant has used the procedures of Part I of OMB Circular A-95 but has not received any clearinghouse comments.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.173 The period for clearinghouse review; the effect of not complying with Part I of OMB Circular A-95.

(a) OMB Circular A-95 gives a clearinghouse 30 days to—

(1) Notify affected agencies and governments; and

(2) Consult with the applicant about the application.

(b) The Circular also permits a clearinghouse to take an additional 30 days to review the application and to transmit comments to the applicant.

(c) The appropriate official of the Education Division may make a grant under a program listed in § 100a.170 only if the applicant has complied with Part I of OMB Circular A-95.

(20 U.S.C. 1221e-3(a)(1))

Development of Curricula or Instructional Materials

§ 100a.190 Consultation.

Each applicant that intends to develop curricula or instructional materials under a grant is encouraged to assure that the curricula or materials will be developed in a manner conducive to dissemination, through continuing consultations with publishers, personnel of State and local educational agencies, teachers, administrators, community representatives, and other individuals experienced in dissemination.

(20 U.S.C. 1231c(c)(1))

§ 100a.191 Consultation costs.

An applicant may budget reasonable consultation fees or planning costs in connection with the development of curricula or instructional materials.

(20 U.S.C. 1231c(c)(2))

§ 100a.192 Dissemination.

If an applicant proposes to publish and disseminate curricula or instructional materials under a grant, the applicant shall include an assurance in its application that the curricula or materials will reach the populations for which the curricula or materials were developed.

(20 U.S.C. 1231c(c)(3))

Subpart D—How Grants Are Made

Selection of New Projects

§ 100a.200 How applications for new grants are selected for funding.

(a) *Direct grant programs.* The Education Division administers two kinds of direct grant programs. A direct grant program is either a discretionary grant or a formula grant program.

(b) *Discretionary grant programs.* (1) A discretionary grant program is one that permits the appropriate official of the Education Division to use discretionary judgment in selecting applications for funding.

Cross-reference.—See § 100a.219 Exceptions to the procedures under § 100a.217.

(2) The appropriate official of the Education Division uses selection criteria to evaluate the applications submitted for new grants under a discretionary grant program.

(3) Sections 100a.202 through 100a.206 contain the EDGAR selection criteria. The EDGAR criteria used by a program are repeated in the program regulations. If a program does not have selection criteria, the appropriate official uses the EDGAR criteria, with each criterion weighted equally, to evaluate applications.

(c) *Formula grant programs.* (1) A formula grant program is one that entitles certain applicants to receive grants if they meet the requirements of the program. Applicants do not compete with each other for the funds, and each grant is either for a set amount or for an amount determined under a formula.

(2) The appropriate official of the Education Division applies the program statute and regulations to fund projects under a formula grant program. The EDGAR selection criteria in §§ 100a.202–100a.206 are not used to evaluate applications under these programs.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.201 How to use the selection criteria.

(a) *Unweighted criteria.* If the selection criteria for a program are not weighted, the appropriate official of the Education Division evaluates each criterion equally.

(b) *Weighted criteria.* (1) If the selection criteria for a program are weighted, the appropriate official of the Education Division assigns in the program regulations a total number of points that an applicant may receive under all of the criteria.

(2) The minimum weights assigned to EDGAR criteria that are used under a program are stated in §§ 100a.202–100a.206.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.202 Selection criterion—plan of operation.

(a) The appropriate official of the Education Division reviews each application for information that shows the quality of the plan of operation for the project.

(b) The official looks for information that shows—

(1) High quality in the design of the project;

(2) An effective plan of management that insures proper and efficient administration of the project;

(3) A clear description of how the objectives of the project relate to the purpose of the program;

(4) The way the applicant plans to use its resources and personnel to achieve each objective;

(5) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Handicapped persons; and

(iv) The elderly; and

(6) For grants to be made after October 1, 1980 under a program that requires the applicant to provide an opportunity for participation of students enrolled in private schools—a clear description of how the applicant will provide that opportunity.

(c) Under a program using weighted selection criteria, this criterion is assigned at least 10 percent of the total number of points assigned to the program.

(20 U.S.C. 1221e–3(a)(1))

Note.—Paragraph (b)(5), which is intended to ensure equal access and treatment for groups that have been traditionally underrepresented, does not mean that a grantee may include participants in a project who are ineligible under the program that funds the project. For example, under the program Early Education for Handicapped Children (See § 100a.1), a grantee may not serve women or the elderly, and an applicant under that program would not consider these groups under paragraph (b)(5).

§ 100a.203 Selection criterion—quality of key personnel.

(a) The appropriate official of the Education Division reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(b) The official looks for information that shows—

(1) The qualifications of the project director (if one is to be used);

(2) The qualifications of each of the other key personnel to be used in the project;

(3) The time that each person referred to in paragraphs (b) (1) and (2) of this section will commit to the project; and

(4) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Handicapped persons; and

(iv) The elderly.

(c) To determine personnel qualifications, the official considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(d) Under a program using weighted selection criteria, this criterion is assigned at least 7 percent of the total number of points assigned to the program.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.204 Selection criterion—budget and cost effectiveness.

(a) The appropriate official of the Education Division reviews each application for information that shows that the project has an adequate budget and is cost effective.

(b) The official looks for information that shows—

(1) The budget for the project is adequate to support the project activities; and

(2) Costs are reasonable in relation to the objectives of the project.

(c) Under a program using weighted selection criteria, this criterion is assigned at least 5 percent of the total number of points assigned to the program.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.205 Selection criterion—evaluation plan.

(a) The appropriate official of the Education Division reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—See § 100a.590 Evaluation by the grantee.

(b) The official looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(c) Under a program using weighted selection criteria, this criterion, is assigned at least 5 percent of the total number of points assigned to the program.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.206 Selection criterion—adequacy of resources.

(a) The appropriate official of the Education Division reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(b) The official looks for information that shows—

(1) The facilities that the applicant plans to use are adequate; and

(2) The equipment and supplies that the applicant plans to use are adequate.

(c) Under a program using weighted selection criteria, this criterion is assigned at least 3 percent of the total number of points assigned to the program.

(20 U.S.C. 1221e–3(a)(1))

Selection Procedures

100a.215 How the Education Division selects a new project: purpose of §§ 100a.216–100a.222.

Sections 100a.216–100a.222 describe the process the appropriate official of the Education Division uses to select applications for new grants. All of these sections apply to a discretionary grant program. However, only § 100a.216 applies also to a formula grant program.

Cross-reference.—See § 100a.200(b) Discretionary grant program, and (e) Formula grant program.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.216 Returning an application to the applicant.

(a) The appropriate official of the Education Division returns an application to an applicant if—

(1) The applicant is not eligibile.

(2) The applicant does not comply with all of the procedural rules that govern the submission of the application;

(3) The application does not contain the information required under the program; or

(4) The proposed project cannot be funded under the authorizing statute or implementing regulations for the program.

(b) If the appropriate official of the Education Division returns an application under this section, the official includes a statement that explains why the application was returned.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.217 How the Education Division selects applications for new grants.

(a)(1) The appropriate official of the Education Division may use one or more groups of experts to evaluate the applications submitted under each program.

(2) Each group of experts consists of three or more persons who are qualified to evaluate the applications.

(3) In each group of experts, there must be at least one person who is not an employee of the Federal Government.

(4) A person may not serve as a member of a group of experts if—

(i) The person is an employee of HEW who is involved in the administration of the program for which the group is evaluating applications; or

(ii) The person was involved within the past year in the administration of the program for which the group is evaluating applications.

(5) However, if the appropriate official of the Education Division signs a waiver for a person covered by paragraph (a)(4) of this section, that person may serve as a member of a group of experts.

(b) A group of experts uses the selection criteria that apply to the program to evaluate the quality of each application.

(c) After the groups of experts have evaluated the applications, the appropriate official of the Education Division prepares a rank ordering of the applications. The rank ordering of applications is based solely on the evaluations of the applications by the groups of experts.

(d) The official then determines the order in which applications will be selected. The official makes these determinations on the basis of the selection criteria and any priorities or other program requirements that have been published in the Federal Register and apply to the selection of applications for new grants. The official may consider the following in making these determinations:

(1) The information in each application.

(2) The rank ordering of the applications.

(3) Any other information relevant to a criterion, priority, or other requirement that applies to the selection of applications for new grants.

(e) The official selects applications in the order determined under paragraph (d) of this section.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.218 Applications not selected for funding.

If an application is not selected for funding, the appropriate official of the Education Division informs the applicant why the application was not selected.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.219 Exceptions to the procedures under § 100a.217.

The appropriate official of the Education Division may select an application for funding without following the procedures in § 100a.217 if—

(a) The objectives of the project cannot be achieved unless the official makes the grant before the date grants can be made under the procedures in § 100a.217; or

(b) The applicant applies for funds under the Joint Funding Simplification Act; or

(c)(1) The application was evaluated by a group of experts under the preceding competition of the program;

(2) The group of experts rated the application high enough to deserve selection under § 100a.217; and

(3) The application was not selected for funding because the application was mishandled by the Education Division.

(20 U.S.C. 1221e–3(a)(1); 42 U.S.C. 4252(a))

§ 100a.220 Procedures the Education Division uses under § 100a.219(a).

If the special circumstances of § 100a.219(a) appear to exist for an application, the appropriate official of the Education Division uses the following procedures:

(a) The official assembles a board to review the application.

(b) The board consists of—

(1) A program officer of the program under which the applicant wants a grant;

(2) An Education Division grants officer; and

(3) An HEW employee who is not a program officer of the program but who is qualified to evaluate the application.

(c) The board reviews the application to decide if—

(1) The special circumstances under § 100a.219(a) are satisfied;

(2) The application rates high enough, based on the selection criteria, priorities, and other requirements that apply to the program, to deserve selection; and

(3) Selection of the application will not have an adverse impact on the budget of the program

(d) The board forwards the results of its review to the appropriate official of the Education Division.

(e) If each of the conditions in paragraph (c) of this section is satisfied, the appropriate official of the Education Division may select the application for funding.

(f) Even if the official does not select the application for funding, the applicant may submit its application under the procedures in Subpart C of this part.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.221 Procedures the Education Division uses under § 100a.219(b).

The appropriate official of the Education Division uses the following procedures for an application submitted under § 100a.219(b):

(a) The official assembles a board to review the application.

(b)(1) The board consists of—

(i) A program officer from each Education Division program under which the applicant wants funds;

(ii) An Education Division grants officer; and

(iii) An HEW employee who is not a program officer for any of the programs under which the applicant wants funds but who is qualified to review the application.

(2) The board may also include one or more persons who do not work for HEW but who are qualified to review the application.

(c) The board reviews the application to decide if—

(1) The proposed project is feasible, and is consistent with Federal and agency policies concerning the scope and purpose of joint funding;

(2) The applicant has properly demonstrated a relationship among the programs included in the joint funding project;

(3) The proposed project is competitive with similar requests for program funds, including the applications submitted under the procedures in § 100a.217;

(4) There will not be an adverse impact on the budget of any Education Division program under which the applicant wants funds if the project is funded; and

(5) The application rates high enough to deserve funding, based on the selection criteria and other requirements that apply to each Education Division program under which the applicant wants funds.

(d) The board forwards the results of its review to the appropriate official of the Education Division.

(e) If each of the conditions in paragraph (c) of this section is satisfied, the appropriate official may—

(1) Select the project for funding; and

(2) Decide which Education Division programs will fund the project.

(42 U.S.C. 4252(a))

§ 100a.222 Procedures the Education Division uses under § 100a.219(c).

If the special circumstances of § 100a.219(c) appear to exist for an application, the appropriate official of the Education Division may select the application for funding if—

(a) The official has documentary evidence that the special circumstances of § 100a.219(c) exist; and

(b) The official has a statement that explains the circumstances of the mishandling.

(20 U.S.C. 1221e–3(a)(1))

Procedures To Make a Grant

§ 100a.230 How the Education Division makes a grant; purpose of §§ 100a.231–100a.236.

If the appropriate official of the Education Division selects an application under §§ 100a.217, 100a.220, or 100a.222, the official follows the procedures in §§ 100a.231–100a.236 to set the amount and determine the conditions of a grant. Sections 100a.235–100a.236 also apply to grants under formula grant programs.

Cross-reverence.—See § 100a.200 How applications for new grants are selected for funding.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.231 Additional information.

After selecting an application for funding, the appropriate official of the Education Division may require the applicant to submit additional information.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.232 The cost analysis; basis for grant amount.

(a) Before the appropriate official of the Education Division sets the amount of a grant, the official does a cost analysis of the project. The official—

(1) Verifies the cost data in the detailed budget for the project;

(2) Evaluates specific elements of costs; and

(3) Examines costs to determine if they are necessary, reasonable, and allowable under applicable statutes and regulations.

(b) The official uses the cost analysis as a basis for determining the amount of the grant to the applicant. The cost analysis shows whether the applicant can achieve the objectives of the project with reasonable efficiency and economy under the budget in the application.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.233 Setting the amount of the grant.

The appropriate official of the Education Division may fund up to 100 percent of the allowable costs in the budget. In deciding what percent of the allowable costs to fund, the official considers—

(a) Matching or cost sharing requirements that apply; and

(b) Any other financial resources available to the applicant.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.234 The conditions of the grant.

The appropriate official of the Education Division makes a grant to an applicant only after determining—

(a) The approved costs; and

(b) Any special conditions.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.235 The notification of grant award.

(a) To make a grant, the appropriate official issues a notification of grant award and sends it to the grantee.

(b) The notification of grant award sets the amount of the grant and gives other information about the grant.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.236 Effect of the grant.

The grant obligates both the Federal Government and the grantee to the requirements that apply to the grant.

(20 U.S.C. 1221e–3(a)(1))

Cross-reference.—See 45 CFR Part 74, Subpart L—Programmatic Changes and Budget Revisions.

Approval of Multiyear Projects

§ 100a.250 Project period can be up to 60 months.

(a) The appropriate official of the Education Division may approve a project period of up to 60 months.

(b) If a project is approved under the Joint Funding Simplification Act, the appropriate official may approve a project period of up to 60 months even if the official has restricted the project period for other projects under the program.

(20 U.S.C. 1221e–3(a)(1); 42 U.S.C. 4252(a))

§ 100a.251 The budget period.

(a) The appropriate official of the Education Division usually approves a budget period of not more than 12 months, even if the project has a multi-year project period.

(b) If the official approves a multi-year project period, the official—

(1) Makes a grant to the project for the initial budget period; and

(2) Indicates his or her intention to make contination awards to fund the remainder of the project period.

(20 U.S.C. 1221e–3(a))

§ 100a.253 Continuation of a multi-year project after the first budget period.

(a) The appropriate official of the Education Division may make a continuation award for a budget period after the first budget period of an approved multi-year project if—

(1) The Congress has appropriated sufficient funds under the program;

(2) The official is satisfied that the grantee will satisfactorily complete the budget period that is about to end;

(3) The grantee has submitted every report that it must submit before the date of the continuation award; and

(4) Continuation of the project is in the best interest of the Federal Government.

(b) Subject to the criteria in paragraph (a) of this section, in selecting applications for funding under a program the appropriate official of the Education Division gives priority to contination awards over new grants.

(c) In determining the amount of a continuation award, the official reduces the amount of funds needed for the next budget period by the amount of funds that remain available from the current budget period.

(d) A grantee that is in the final budget period of a project period may seek continued assistance for the project under the procedures for selecting new projects.

Cross-reference.—See Subpart C—How to Apply for a Grant.

(20 U.S.C. 1221e–3(a)(1))

Cross-reference.—See § 100a.117 Information needed for a multi-year project; and § 100a.118 Application for a continuation award.

§ 100a.254 Continuation of a multi-year project under the Joint Funding Simplification Act.

(a) If the conditions in § 100a.253(a) are met, the appropriate official of the Education Division may make a continuation award to a multi-year project funded under the Joint Funding Simplification Act.

(b) The appropriate official decides whether to make a continuation award in cooperation with any other Federal agencies or any State agencies that are also funding the proeject.

(42 U.S.C. 4252(a))

Miscellaneous

§ 100a.260 Allotments and reallotments.

(a) Under some of the programs listed in § 100a.1, the appropriate official of the Education Division allots funds under a statutory or regulatory formula.

(b) Any reallotment to other grantees will be made by the official in accordance with the authorizing statute for that program.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.261 Extension of a project period.

The appropriate official of the Education Division may extend a project period if—

(a) Special or unusual circumstances will delay completion of the project;

(b) The grantee provides the official with a written request for the extension at least 45 days before the end of the project period;

(c) The grantee states the reasons why it needs the extension;

(d) The extension does not violate any statute or regulations;

(e) The extension does not involve the obligation of additional Federal funds; and

(f) The extension is to carry out the activities in the approved application.

(20 U.S.C. 1221e–3(a)(1))

Subpart E—What Conditions Must Be Met by a Grantee?

Nondiscrimination

§ 100a.500 Federal statutes and regulations on nondiscrimination.

Each grantee shall comply with the following statutes and regulations:

Subject	Statute	Regulations
Discrimination on the basis of race, color or national origin.	Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d through 2000d–4).	45 CFR Part 80.
Discrimination on the basis of sex.	Title IX of the Education Amendments of 1972 (20 U.S.C. 1681–1683).	45 CFR Part 86.
Discrimination on the basis of handicap.	Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).	45 CFR Part 84.
Discrimination on the basis of age.	The Age Discrimination Act (42 U.S.C. 6101 *et seq.*).	45 CFR Part 90.

(20 U.S.C. 1221e–3(a)(1))

Project Staff

§ 100a.510 Use of a project director.

(a) This section applies to each grantee that uses a project director to administer its project.

(b) The grantee shall insure that its project director has—

(1) Appropriate professional qualifications, experience, and administrative skills, and

(2) A clear commitment to the objectives of the project.

(c) The grantee shall give its project director sufficient authority to conduct the project effectively.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.511 Waiver of requirement for a full-time project director.

(a) If regulations under a program require a full-time project director, the appropriate official of the Education Division may waive that requirement under the following conditions:

(1) The project will not be adversely affected by the waiver.

(2)(i) The project director is needed to coordinate two or more related projects; or

(ii) The project director must teach a minimum number of hours to retain faculty status.

(b) The waiver either permits the grantee—

(1) To use a part-time project director; or

(2) Not to use any project director.

(c)(1) An applicant or a grantee may request the waiver.

(2) The request must be in writing and must demonstrate that a waiver is appropriate under this section.

(3) The appropriate official of the Education Division gives the waiver in writing. The waiver is effective on the date the official signs the waiver.

(20 U.S.C. 1221e–3(a)(1))

Cross-reference.—See 45 CFR 74.103(c) Changes in key people in a research project.

§ 100a.515 Use of consultants.

(a) Subject to Federal statutes and regulations, a grantee shall use its general policies and practices when it hires, uses, and pays a consultant as part of the project staff.

(b) The grantee may not use its grant to pay a consultant unless—

(1) There is a need in the project for the services of that consultant; and

(2) The grantee cannot meet that need by using an employee rather than a consultant.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.516 Compensation of consultants—employees of institutions of higher education.

If an institution of higher education receives a grant for research or for educational services, it may pay a consultant's fee to one of its employees only in unusual circumstances and only if—

(a) The work performed by the consultant is in addition to his or her regular departmental load; and

(b)(1) The consultation is across departmental lines; or

(2) The consultation involves a separate or remote operation.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.517 Changes in key staff members.

A grantee shall comply with 45 CFR 74.103(c)(2) concerning replacement or lesser involvement of any key project staff, whether or not the grant is for research.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.518 Minimum wage rates.

The grantee shall pay a project staff member not less than any minimum wage required under Federal Law.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.519 Dual compensation of staff.

A grantee may not use its grantee to pay a project staff member for time or work for which that staff member is compensated from some other source of funds.

(20 U.S.C. 1221e–3(a)(1))

Conflict of Interest

§ 100a.524 Conflict of interest: purpose of § 100a.525.

(a) The conflict of interest regulations of the Education Division that apply to a grant are in § 100a.525.

(b) These conflict of interest regulations do not apply to a "government" as defined in 45 CFR 74.3.

Note.—A government must provide a conflict of interest assurance under the standard application required by Subpart N of 45 CFR Part 74 (Forms for Applying for Grants).

(c) The regulations in § 100a.525 do not apply to a grantee's procurement contracts. The conflict of interest regulations that cover those procurement contracts are in 45 CFR Part 74.

Subpart P—Procurement Standards

(20 U.S.C. 1221e–3(a)(1))

§ 100a.525 Conflict of interest: participation in a project.

(a) A grantee may not permit a person to participate in an administrative decision regarding a project if—

(1) The decision is likely to benefit that person or a member of his or her immediate family; and

(2) The person—

(i) Is a public official; or

(ii) Has a family or business relationship with the grantee.

(b) A grantee may not permit any person participating in the project to use his or her position for a purpose that is—or gives the appearance of being—motivated by a desire for a private financial gain for that person or for others.

(20 U.S.C. 1221e–3(a)(1))

Allowable Costs

§ 100a.530 General cost principles.

The general principles to be used in determining costs applicable to grants and cost-type contracts under grants are referenced in Subpart Q of 45 CFR Part 74 (Cost Principles).

(20 U.S.C. 1221e–3(a)(1))

Cross-reference.—See 45 CFR Part 74, Subpart G—Matching or Cost Sharing.

§ 100a.531 Limit on total cost of a project.

A grantee shall insure that the total cost to the Federal Government is not more than the amount stated in the notification of grant award.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.532 Use of funds for religion prohibited.

(a) No grantee may use its grant to pay for any of the following:

(1) Religious worship, instruction, or proselytization.

(2) Equipment or supplies to be used for any of those activities.

(3) Construction, remodeling, repair, operation, or maintenance of any facility or part of a facility to be used for any of those activities.

(4) An activity of a school or department of divinity.

(b) As used in this section, "school or department of divinity" means an institution or a component of an institution whose program is specifically for the education of students to—

(1) Prepare them to enter into a religious vocation; or

(2) Prepare them to teach theological subjects.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.533 Acquisition of real property; construction.

No grantee may use its grant for acquisition of real property or for construction unless specifically permitted by the authorizing statute or implementing regulations for the program.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.534 Training grants—automatic increases for additional dependents.

The appropriate official of the Education Division increases an educational training grant to cover the cost of additional dependents not specified in the notification of grant award if—

(a) Allowances for those dependents are authorized by the program statute and are allowable under the grant; and

(b) Appropriations are available to cover the cost.

(20 U.S.C. 1221e–3(a)(1))

Indirect Cost Rates

§ 100a.560 General indirect cost rates; exceptions.

(a) Appendices C–F to 45 CFR Part 74 describe the differences between direct and indirect costs and include the principles for determining the general indirect cost rate that a grantee may use for grants under most programs.

(b) Sections 100a.562–100a.568 provide restrictions on indirect cost rates under certain programs.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.561 Approval of indirect cost rates.

(a) The appropriate official of the Education Division approves an indirect cost rate for a grantee other than a local educational agency. For the purposes of this section, the term "local educational agency" does not include a State agency.

(b) Each State educational agency, on the basis of a plan approved by the Commissioner, shall approve an indirect cost rate for each local educational agency that requests it to do so.

(c) Each indirect cost rate must be approved annually.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.562 Indirect cost rates for educational training projects.

(a) The appropriate official of the Education Division may approve an indirect cost rate for an educational training project at the lesser of—

(1) The actual indirect cost rate of the grantee; or

(2) Eight percent of the total direct costs of the project.

(b) This section does not apply to—

(1) A State (as defined in 45 CFR 74.3); or

(2) A local government (as defined in 45 CFR 74.3).

(20 U.S.C. 1221e–3(a)(1))

§ 100a.563 Restricted indirect cost rate—programs covered.

Sections 100a.564–100a.568 apply to each program that has a statutory requirement not to use Federal funds to supplant non-Federal funds. These programs include the following:

Program	Authorizing statute
Bilingual Education	Title VII–A of the Elementary and Secondary Education Act
Consumer Education Program	Title III–E of the Elementary and Secondary Education Act
Environmental Education Program.	Title III–H of the Elementary and Secondary Education Act
Safe Schools	Title IX–D of the Elementary and Secondary Education Act
Follow Through Program	Sections 551–556 of the Economic Opportunity Act of 1964
National Alcohol and Drug Abuse Prevention Program.	Public Law 93–422
Indian Education Act (Part A)	Title IV–A of Public Law 92–318

(20 U.S.C. 1221e–3(a)(1))

§ 100a.564 Restricted indirect cost rate—formula.

(a) An indirect cost rate for a grant under a program covered by § 100a.563 is determined by the following formula:

Indirect cost rate = (Administrative charge + Fixed charges) ÷ (Other expenditures)

(b) Administrative charges, fixed charges, and other expenditures must be determined under §§ 100a.565–100a.567.

(c) Under the programs covered by § 100a.563, a grantee other than a State or a local government (as those terms are defined in 45 CFR 74.3) may use—

(1) An indirect cost rate computed under paragraph (a) of this section; or

(2) An indirect cost rate of eight percent unless the appropriate official of the Education Division determines that the grantee would have a lower rate under paragraph (a) of this section.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.565 Administrative charge.

(a) As used in § 100a.564, "administrative charge" means the cost of an activity that is for the direction and control of the grantee's affairs that are organization wide. An activity is not organization-wide if it is limited to one activity, one component of the grantee, one subject, one phase of operations, or other single responsibility.

(b) The term includes the cost of performing a service function, such as accounting, payroll preparation, or personnel management, that is normally at the grantee's level even if the function is physically located elsewhere for convenience or better management.

(c) The term does not include expenditures for—

(1) The governing body of the grantee;

(2) Compensation of the chief Administrative officer of the grantee;

(3) Compensation of the chief administrative officer of any component of the grantee; and

(4) Operation of the immediate offices of these officers.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.566 Fixed charges.

As used in § 100a.564, "fixed charges" means contributions of the grantee to—

(a) Retirement, including State, county, or local retirement funds, Social Security, and pension payments;

(b) Unemployment compensation payments;

(c) Property, employee, health, and liability insurance; and

(d) All similar costs normally considered to be employee fringe benefits.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.567 Other expenditures.

(a) As used in § 100a.564, "other expenditures" means the grantee's total expenditures for its federally- and non-federally-funded activities in the most recent year for which data are available.

(b) The term does not include—

(1) Administrative charges determined under § 100a.565;

(2) Fixed charges determined under § 100a.566;

(3) Capital outlay;

(4) Debt service;

(5) Fines and penalties;

(6) Contingencies; and

(7) Election expenses. However, the term does include election expenses that result from elections required by a program statute.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.568 Using the restricted indirect cost rate.

(a) Under the programs referenced in § 100a.563, the maximum amount of indirect costs under a grant is determined by the following formula:

Indirect costs = (Indirect cost rate) × (Total direct costs of the grant minus any costs for capital outlay, debt service, or election expenses unless the election is required by a program statute)

(b) If a grantee uses an indirect cost rate, the administrative and fixed charges covered by that rate must be excluded by the grantee from the direct costs it charges to the grant.

U.S.C. 1221e–3(a)(1))

Coordination

§ 100a.580 Coordination with other activities.

(a) A grantee shall, to the extent possible, coordinate its project with other activities that are in the same geographic area served by the project and that serve similar purposes and target groups.

(b) A grantee whose project includes activities to improve the basic skills of children, youth, or adults shall, to the extent possible, coordinate its project with other basic skills activities that are in the same geographic area served by the project.

(c) For the purposes of this section, "basic skills" means reading, mathematics, and effective communication, both written and oral.

(d) The grantee shall continue its coordination during the project period.

(20 U.S.C. 1221e–3(a)(1); 2890)

§ 100a.581 Methods of coordination.

Depending on the objectives and requirements of its project, a grantee shall use one or more of the following methods of coordination:

(a) Planning the project with organizations and individuals who have similar objectives or concerns.

(b) Sharing information, facilities, staff, services, or other resources.

(c) Engaging in joint activities such as instruction, needs assessment, evaluation, monitoring, and technical assistance or staff training.

(d) Using the grant funds so as not to duplicate or counteract the effects of funds made available under other programs.

(e) Using the grant funds to increase the impact of funds made available under other programs.

(20 U.S.C. 1221e–3(a)(1))

Evaluation

§ 100a.590 Evaluation by the grantee.

A grantee shall evaluate at least annually—

(a) The grantee's progress in achieving the objectives in its approved application;

(b) The effectiveness of the project in meeting the purposes of the program; and

(c) The effect of the project on persons being served by the project, including—

(1) Any persons who are members of groups that have been traditionally underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Handicapped persons; and

(iv) The elderly; and

(2) If the program statute requires that private school students be provided an opportunity to participate, the students who are enrolled in private schools.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.591 Federal evaluation—cooperation by a grantee.

A grantee shall cooperate in any evaluation of the program by the Secretary or the appropriate offical of the Education Division.

(20 U.S.C. 1226c, 1231a)

§ 100a.592 Federal evaluation—satisfying requirement for grantee evaluation.

If a grantee cooperates in a Federal evaluation of a program, the appropriate official of the Education Division may determine that the grantee meets the evaluation requirements of the program, including § 100a.590.

(20 U.S.C. 1226c, 1231a)

Construction

Cross-reference.—See 45 CFR Part 74, Subpart P—Procurement Standards.

§ 100a.600 Use of a grant for construction: purpose of §§ 100a.601-100a.615.

Sections 100a.601–100a.615 apply to—

(a) An applicant that requests funds for construction; and

(b) A grantee whose grant includes funds for construction.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.601 Applicant's assessment of environmental impact.

An applicant shall include with its application its assessment of the impact of the proposed construction on the quality of the environment in accordance with Section 102(2)(C) of the National Environmental Policy Act of 1969 and Executive Order 11514 (34 FR 4247).

(42 U.S.C. 4332(2)(C))

§ 100a.602 Preservation of historic sites must be described in the application.

(a) An applicant shall describe in its application the relationship of the proposed construction to and probable effect on any district, site, building, structure, or object that is—

(1) Included in the National Register of Historic Places; or

(2) Eligible under criteria established by the Secretary of Interior for inclusion in the National Register of Historic Places.

(Cross-reference.—See 36 CFR Part 60 for these criteria.)

(b) In deciding whether to make a grant, the appropriate official of the Education Division considers—

(1) The information provided by the applicant under paragraph (a) of this section; and

(2) Any comments by the Advisory Council on Historic Preservation.

Cross-reference.—See 36 CFR Part 800, which provides for comments from the Council.

(16 U.S.C. 470f)

§ 100a.603 Grantee's title to site.

A grantee must have or obtain a full title or other interest in the site, including right of access, that is sufficient to insure the grantee's undisturbed use and possession of the facilities for 50 years or the useful life of the facilities, whichever is longer.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.604 Availability of cost-sharing funds.

A grantee shall ensure that sufficient funds are available to meet any non-Federal share of the cost of constructing the facility.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.605 Beginning the construction.

(a) A grantee shall begin work on construction within a reasonable time after the grant for the construction is made.

(b) Before construction is advertised or placed on the market for bidding, the grantee shall get approval by the appropriate official of the Education Division of the final working drawings and specifications.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.606 Completing the construction.

(a) A grantee shall complete its construction within a reasonable time.

(b) The grantee shall complete the construction in accordance with the application and approved drawings and specifications.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.607 General considerations in designing facilities and carrying out construction.

(a) A grantee shall insure that the construction is—

(1) Functional;

(2) Economical; and

(3) Not elaborate in design or extravagant in the use of materials, compared with facilities of a similar type constructed in the State or other applicable geographic area.

(b) The grantee shall, in developing plans for the facilities, consider excellence of architecture and design and inclusion of works of art. The grantee may not spend more than one percent of the cost of the project on inclusion of works of art.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.608 Areas in the facilities for cultural activities.

A grantee shall make reasonable provision, consistent with the other uses to be made of the facilities, for areas in the facilities that are adaptable for artistic and other cultural activities.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.609 Comply with safety and health standards.

In planning for and designing facilities, a grantee shall observe—

(a) The standards under the Occupational Safety and Health Act of 1970 (Pub. L. 91-576) (See 36 CFR Part 1910); and

(b) State and local codes, to the extent that they are more stringent.

(29 U.S.C. 651)

§ 100a.610 Access by the handicapped.

A grantee shall comply with the Federal regulations on access by the handicapped that apply to construction and alteration of facilities. These regulations are—

(a) For residential facilities—24 CFR Part 40; and

(b) For non-residential facilities—41 CFR Subpart 101-19.6.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.611 Avoidance of flood hazards.

In planning the construction, a grantee shall, in accordance with the provisions of Executive Order 11988 of February 10, 1978 (43 FR 6030) and rules and regulations that may be issued by the Secretary to carry out those provisions—

(a) Evaluate flood hazards in connection with the construction; and

(b) As far as practicable, avoid uneconomic, hazardous, or unnecessary use of flood plains in connection with the construction.

(Executive Order 11296.)

§ 100a.612 Supervision and inspection by the grantee.

A grantee shall maintain competent architectural engineering supervision and inspection at the construction site to insure that the work conforms to the approved drawings and specifications.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.613 Relocation assistance by the grantee.

A grantee is subject to the regulations on relocation assistance and real property acquisition in 45 CFR Part 15.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.614 Grantee must have operational funds.

A grantee shall insure that, when construction is completed, sufficient funds will be available for effective operation and maintenance of the facilities.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.615 Operation and maintenance by the grantee.

A grantee shall operate and maintain the facilities in accordance with applicable Federal, State, and local requirements.

(20 U.S.C. 1221e-3(a)(1))

Equipment and Supplies

Cross-reference.—See 45 CFR Part 74, Subpart O—Property.

§ 100a.618 Charges for use of equipment or supplies.

A grantee may not charge students or school personnel for the ordinary use of equipment or supplies purchased with grant funds.

(20 U.S.C. 1221e-3(a)(1))

Publications and Copyrights

§ 100a.620 General conditions on publication.

(a) *Content of materials.* Subject to any specific requirements that apply to its grant, a grantee may decide the format and content of project materials that it publishes or arranges to have published.

(b) *Required statement.* The grantee shall ensure that any publication that contains project materials also contains the following statements:

"The contents of this (insert type of publication; e.g., book, report, film) were developed under a grant from the (insert name of agency in the Education Division that provided the grant), Department of Health, Education, and Welfare. However, those contents do not necessarily represent the policy of that agency, and you should not assume endorsement by the Federal Government."

(20 U.S.C. 1221e-3(a)(1))

§ 100a.621 Copyright policy for grantees and contractors.

(a) A grantee may copyright project materials in accordance with 45 CFR Part 74.

(b) A contractor may not copyright any project materials developed under the contract unless specifically permitted in the contract to do so.

(20 U.S.C. 1221e-3(a)(1))

Cross-reference.—See 45 CFR Part 74, Subpart F—Grant-Related Income; and 45 CFR 74.145 Copyrights.

§ 100a.622 Definition of "project materials."

As used in §§ 100a.620-100a.621, "project materials" means a copyrightable work developed with funds from a grant or contract of the Education Division.

(20 U.S.C. 1221e-3(a)(1))

Inventions and Patents

Cross-reference.—See 45 CFR Part 74.44 Inventions and Patents.

§ 100a.625 Invention and patent policy.

Grantees and contractors are subject to the HEW policy in 45 CFR Parts 6 and 8 regarding inventions and patents.

§ 100a.626 Show Federal support; give papers to vest title.

(a) Any patent application filed by a grantee for an invention made under a grant must include the following statement in the first paragraph:

"The invention described in this application was made under a grant from the (insert name of agency in the Education Division that gave the grant), Department of Health, Education, and Welfare."

(b) On request, the grantee shall furnish HEW with executed instruments prepared by the Federal Government, and other papers that may be necessary, to vest in the Federal Government the rights reserved in accordance with a determination made under 45 CFR Part 8. These instruments and papers enable the Government to apply for and prosecute a patent application, in any country, to cover each invention for which the Federal Government has the right to file an application.

(20 U.S.C. 1221e-3(a)(1))

Other Requirements for Certain Projects

Cross-reference.—See 45 CFR Part 74, Subpart C—Bonding and Insurance.

§100a.650 Participation of students enrolled in private schools.

If the authorizing statute for a program requires a grantee to provide for participation by students enrolled in private schools, the grantee shall provide a genuine opportunity for equitable participation in accordance with the requirements that apply to subgrantees under 45 CFR 100b.650-100b.662.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.681 Protection of human research subjects.

If a grantee uses a human subject in a research project, the grantee shall protect the person from physical, psychological, or social injury resulting from the project.

(20 U.S.C. 1221e-3(a)(1))

Cross-reference.—See 45 CFR Part 46—Protection of Human Research Subjects.

§ 100a.682 Treatment of animals.

If a grantee uses an animal in a project, the grantee shall provide the animal with proper care and humane treatment in accordance with the Animal Welfare Act of 1970.

(Pub. L. 89-544, as amended)

§ 100a.683 Health or safety standards for facilities.

A grantee shall comply with any Federal health or safety requirements that apply to the facilities that the grantee uses for the project.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.684 Day care services.

(a) If a grantee uses program funds to provide day care services, the grantee shall comply with the requirements in 45 CFR Part 71.

(b) The appropriate official of the Education Division may waive this requirement by publication of a notice in the Federal Register.

(20 U.S.C. 1221e-3(a)(1))

Subpart F—What Are the Administrative Responsibilities of a Grantee?

General Administrative Responsibilities

§ 100a.700 Compliance with statutes, regulations, and applications.

A grantee shall comply with applicable statutes, regulations, and approved applications, and shall use Federal funds in accordance with those statutes, regulations, and applications.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.701 The grantee administers or supervises the project.

A grantee shall directly administer or supervise the administration of the project.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.702 Fiscal control and fund accounting procedures.

A grantee shall use fiscal control and fund accounting procedures that insure proper disbursement of and accounting for Federal funds.

(20 U.S.C. 1221e-3(a)(1))

Cross-reference.—See 45 CFR Part 74, Subpart B—Cash Depositories, Subpart H—Standards for Grantee and Subgrantee Financial Management Systems, and Subpart K—Grant and Subgrant Payment Requirements.

§ 100a.703 Obligation of funds during the grant period.

A grantee may use grant funds only for obligations it makes during the grant period.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.707 When obligations are made.

The following table shows when a grantee makes obligations for various kinds of property and services.

If the obligation is for—	The obligation is made—
(a) Acquisition of real or personal property.	On the date the grantee makes a binding written commitment to acquire the property.
(b) Personal services by an employee of the grantee.	When the services are performed.
(c) Personnal services by a contractor who is not an employee of the grantee.	On the date on which the grantee makes a binding written commitment to obtain the services.
(d) Performance of work other than personal services.	On the date on which the grantee makes a binding written commitment to obtain the work.
(e) Public utility services	When the grantee receives the services.
(f) Travel	When the travel is taken.
(g) Rental of real or personal property.	When the grantee uses the property.
(h) A preagreement cost that was properly approved by the appropriate official of the Education Division under the cost principles in appendices C–F to 45 CFR Part 74.	On the first day of the grant period.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.708 Prohibition of subgrants.

(a) A grantee may not make a subgrant under a program listed in § 100a.1 unless specifically authorized by statute.

(b) A grantee may contract for supplies, equipment, construction, and other services, in accordance with 45 CFR Part 74, Subpart P—Procurement Standards.

(20 U.S.C. 1221e–3(a)(1))

Reports

Cross-reference.—See 45 CFR Part 74, Subpart I—Financial Reporting Requirements, and Subpart J—Monitoring and Reporting of Program Performance.

§ 100a.720 Financial and performance reports.

(a) This section applies to the reports required under 45 CFR Part 74, Subpart I (financial reporting) and Subpart J (performance reporting).

(b) A grantee shall submit these reports annually, unless the appropriate official of the Education Division allows less frequent reporting. However, the Director of the National Institute of Education may require a grantee to submit performance reports more often than annually.

(c) The appropriate official of the Education Division may, under 45 CFR 74.7 (Special grant or subgrant conditions) or 45 CFR 74.72(e) (Grantee accounting systems), require a grantee to report more frequently than annually.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.721 Reports under the Joint Funding Simplification Act.

(a) The appropriate official of the Education Division determines the frequency and scope of reports necessary to assure proper monitoring of a grant under the Joint Funding Simplification Act.

(b) The appropriate official makes this determination in cooperation with any other Federal or State agencies that are also funding the grant.

(42 U.S.C. 4252(a))

Records

Cross-reference.—See 45 CFR Part 74, Subpart D—Retention and Access Requirements for Records.

§ 100a.730 Records related to grant funds.

A grantee shall keep records that fully show—

(a) The amount of funds under the grant;

(b) How the grantee uses the funds;

(c) The total cost of the project;

(d) The share of that cost provided from other sources; and

(e) Other records to facilitate an effective audit.

(20 U.S.C. 1232f)

§ 100a.731 Records related to compliance.

A grantee shall keep records to show its compliance with program requirements.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.732 Records related to performance.

(a) A grantee shall keep records of significant project experiences and results.

(b) The grantee shall use the records under paragraph (a) to—

(1) Determine progress in accomplishing project objectives; and

(2) Revise those objectives, if necessary.

(20 U.S.C. 1221e–3(a)(1))

Cross-reference.—See 45 CFR 74.103 (b) and (c)—Procedures for revising objectives.

§ 100a.733 Records related to State approval applications.

(a) This section applies to programs that require State approval of applications.

(b) The State shall keep a complete case file on each application it receives.

(c) The State shall keep a full record of—

(1) Any hearing related to an application; and

(2) Any proceeding by which the State establishes relative priorities or recommends Federal shares for eligible projects.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.734 Record retention period.

Unless a longer period is required under 45 CFR Part 74, a grantee shall retain records for five years after the completion of the activity for which it uses grant funds.

Cross-reference.—See 45 CFR Part 74.21—Length of retention period; and 74.22 Starting date of retention period.

(20 U.S.C. 1232f(a))

Privacy

§ 100a.740 Protection of and access to student records.

Most records on present or past students are subject to the requirements of Section 438 of GEPA and its implementing regulations in 45 CFR Part 99. (Section 438 is the Family Educational Rights and Privacy Act of 1974.)

(20 U.S.C. 1231(g))

§ 100a.741 Protection of students' privacy in research and testing.

(a) If a project funded by the Office of Education is designed to explore or develop new or unproven teaching methods or techniques, the grantee must give parents or guardians of children who participate in the project access to instructional material that will be used in connection with the project, including teacher's manuals, films, tapes, or other supplementary instructional material.

(b) No student may be required, as part of any program of the Education Division, to submit to psychiatric examination, testing, or treatment, or psychological examination, testing, or treatment, in which the primary purpose is to reveal information concerning any of the following:

(1) Political affiliations.

(2) Mental and psychological problems potentially embarrassing to the student or his family.

(3) Sex behavior and attitudes.

(4) Illegal, anti-social, self-incriminating and demeaning behavior.

(5) Critical appraisals of other individuals with whom respondents have close family relationships.

(6) Legally recognized privileged and analogous relationships, such as those of lawyers, physicians, and ministers.

(7) Income—other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under the program—without the prior consent of the student (if the student is an adult or emancipated minor) or, in the case of unemancipated minor, without the prior written consent of the parent.

(20 U.S.C. 1232h)

Data Collection by a Grantee

§ 100a.750 Approval of data collection instruments.

(a) The Education Division is the sponsor of the data collection activity of a grantee in any of the following circumstances:

(1) The grantee represents to respondents that the data is being collected for or in association with the Education Division. This does not include acknowledgment of the assistance the grantee received under the grant.

(2) The grantee uses the data collection instrument to collect data that the Education Division has requested for the planning, operation, or evaluation of an Education Division Federal program.

(3) The grant provides for Education Division approval of the survey design, content of the instrument, or data collection procedures.

(4) The grant provides for—

(i) The grantee to submit data on individual respondents; or

(ii) The grantee to prepare and submit tabulations of the data requested by the Education Division.

(b) If the Education Divison sponsors a data collection activity of a grantee, the data collection instruments to be used by the grantee are subject to review under either—

(1) The paperwork control requirements of Section 400A of GEPA (the Federal Education Data Acquisition Council (FEDAC) procedurds); or

(2) The requirements under OMB Circular A-40.

(c) The FEDAC procedures apply to a data collection activity sponsored by the Education Division if—

(1) The respondents are primarily educational agencies or institutions; and

(2) The purpose of the activity is to get information needed for—

(i) The management of Federal educational programs;

(ii) The development of policy related to those programs; or

(iii) Research or evaluation studies related to the implementation of those programs.

(20 U.S.C. 1221-3; 1221e-3(a)(1))

Cross-reference.—See the FEDAC procedures published in the Federal Register on August 8, 1979 (44 FR 46535).

§ 100a.751 Procedures if approval is required.

If approval of a data collection instrument is required under the FEDAC procedures or under OMB Circular A-40, the grantee shall submit an original and four copies of each of the following to the appropriate official of the Education Division:

(a) The proposed data collection instrument.

(b) A completed OMB Standard Form 83.

(c) The supporting statement required in the "Instructions for Requesting OMB Approval under the Federal Reports Act," as described in standard form 83A.

(d) Supplementary information required by FEDAC under the procedures published in the Federal Register on August 8, 1979 (44 FR 46535).

(20 U.S.C. 1221-3; 1221e-3(a)(1))

§ 100a.752 Responsibility for data collection.

Unless FEDAC or the OMB approves a data collection instrument, the grantee may not in any way represent or imply that the data is being collected by or for the Federal Government. This does not preclude the grantee from acknowledging the assistance it received under the grant.

(20 U.S.C. 1221e-3(a)(1))

§100a.753 Confidentiality of response.

In using data collection instruments, a grantee shall provide for anonymity and confidentiality of responses from individuals.

(20 U.S.C. 1221-3; 1221e-3(a)(1))

§ 100a.754 Exemption from coverage.

The regulations in §§ 100a.750-100a.753 do not apply to data collection instruments that are solely—

(a) Tests or examinations to determine knowledge, ability, or aptitude of individuals; or

(b) Instruments to collect data for identification or classification in connection with those tests or examinations.

(20 U.S.C. 1221-3; 1221e-3(a)(1))

§ 100a.755 Definitions used in §§ 100a.750-100a.754.

As used in §§ 100a.750-100a.754—

"Data collection instrument" means a report form, application form, schedule, questionnaire, or similar instrument for getting answers to identical questions from ten or more respondents.

"Respondent" is an individual or organization from whom a grantee collects information either directly or indirectly.

(20 U.S.C. 1221e-3(a)(1))

Subpart G—What Procedures Does the Education Division Use To Get Compliance?

Cross-reference.—See 45 CFR Part 74, Subpart M—Grant and Subgrant Closeout, Suspension, and Termination.

§ 100a.900 Waiver of regulations prohibited.

(a) No official, agent, or employee of HEW may waive any regulation that applies to an Education Division program, unless the regulation specifically provides that it may be waived.

(b) No act or failure to act by an official, agent, or employee of HEW can affect the authority of the appropriate official of the Education Division to enforce regulations.

(43 Dec. Comp. Gen. 31 (1963))

§ 100a.901 Suspension and termination.

(a) The appropriate official of the Education Division uses the Departmental Grant Appeals Board to resolve disputes within the jurisdiction of that board. The regulations governing the Department Grant Appeals Board are in 45 CFR Part 16.

Cross-reference.—See 45 CFR 16.5 Jurisdiction of the board.

(b) The Commissioner may use the Education Appeal Board to resolve disputes that are not within the jurisdiction of the Departmental Grant Appeals Board. (See 45 CFR Part 100d—Education Appeal Board.)

(c) The following sections in 45 CFR Part 74 apply to suspension and termination of a grant made by the Office of the Assistant Secretary for Education, the National Institute of Education, or the Institute of Museum Services:

(1) Section 74.113 (Violation of terms).

(2) Section 74.114 (Suspension).

(3) Section 74.115 (Termination).

(4) The last sentence of § 74.73(c) (Financial reporting after a termination).

(5) Section 74.112 (Amounts payable to the Federal Government).

(20 U.S.C. 1221e-3(a)(1))

§ 100a.902 Informal procedures.

Athough either the appropriate official of the Education Division or a grantee may request an informal meeting regarding a proposed termination, the grantee is considered, for purposes of 45 CFR 16.5(b)(2), to have exhausted Education Division informal procedures when the grantee receives the notice of termination.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.903 Effective date of termination.

Termination is effective on the latest of—

(a) The date of delivery to the grantee of the notice of termination;

(b) The termination date given in the notice of termination; or

(c)(1) For a grant made by the Office of Education, the date of a final decision of the Commissioner under 45 CFR Part 100d; or

(2) For a grant made by the Office of the Assistant Secretary for Education, the National Institute of Education, or the Institute of Museum Services, the date of a final decision by the Departmental Grant Appeals Board under 45 CFR Part 16.

(20 U.S.C. 1221e-3(a)(1))

PART 100B—STATE-ADMINISTERED PROGRAMS

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Authority.—Section 408(a)(1) of Pub. L. 90-247, 88 Stat. 559, 560, as amended (20 U.S.C. 1221e-3(a)(1)), unless otherwise noted.

Subpart A—General

Regulations That Apply to State-Administered Programs

§ 100b.1 Programs to which Part 100b applies.

The regulations in Part 100b apply to the programs of the Office of Education that are listed in the following table. In addition to the name of the program, the table gives the statute that authorizes the program, the regulations that implement the program, and the number that the Catalog of Federal Domestic Assistance (CFDA) gives to the program.

(20 U.S.C. 1221e-3(a)(1))

Note.—Some programs are not currently funded. Check with the State agency responsible for administering the program.

Name of program	Authorizing statute	Implementing regulations (45 CFR)	CFDA No.
A. Elementary and Secondary Education Programs			
Financial Assistance to Local Educational Agencies To Meet the Special Educational Needs of Educationally Deprived Children (except Coordination of Migrant Education and Transition of Neglected or Delinquent Children—See 45 CFR Part 100a)..	Title I-A of the Elementary and Secondary Education Act (except Sections 143 and 153) (20 U.S.C. 2701-2754).	Parts 116 and 116a	13.428 and 13.512.
Grants to State Agencies for Programs To Meet the Special Educational Needs of Children in Institutions for Neglected or Delinquent Children.	Sections 151-153 of the Elementary and Secondary Education Act (20 U.S.C. 2781-2783).	Parts 116 and 116c	13.428 and 13.431.
Grants to State Educational Agencies for Programs To Meet the Special Educational Needs of Migratory Children.	Section 141-143 of the Elementary and Secondary Education Act (20 U.S.C. 2761-2763).	Parts 116 and 116d	13.428 and 13.429.
State Basic Skills Program	Title II-B of the Elementary and Secondary Education Act (20 U.S.C. 2901-2904).	Part 162	13.599.
Financial Assistance for School Library Resources, Textbooks and Other Instructional Materials.	Title II of the Elementary and Secondary Education Act (as in effect Sept. 30, 1978).	See 43 FR 57253 (December 7, 1978)	None.
Supplementary Centers and Services, Guidance, Counseling, and Testing Programs.	Title III of the Elementary and Secondary Education Act (as in effect Sept. 30, 1978).	See 43 FR 57253 (December 7, 1978)	None.
Educational Improvement, Resources, and Support	Title IV of the Elementary and Secondary Education Act (20 U.S.C. 1801-1832).	Part 134	13.570, 13.571, and 13.——.
Strengthening State Educational Agency Management	Title V-B of the Elementary and Secondary Education Act (20 U.S.C. 3161-3163).	None	None.
Federal Financial Assistance for Strengthening State Departments of Education—Basic Grants.	Title V-A (except Section 505—See 45 CFR Part 100a) of the Elementary and Secondary Education Act (as in effect Sept. 30, 1978).	See 43 FR 57253 (December 7, 1978)	13.486.
Community Schools Program	Title VIII of the Elementary and Secondary Education Act (except Sections 809-813—See 100a) (20 U.S.C. 3281-3286).	Part 160b, Subpart B	None.
Gifted and Talented Children Program	Title IX of the Elementary and Secondary Education Act (except Section 905—See 45 CFR Part 100a) (20 U.S.C. 33[illegible]3314; 3316-3318).	Part 195	13.562.
Strengthening Instruction in Academic Subjects in Public Schools.	Title III-A of the National Defense Education Act of 1958 (20 U.S.C. 441-444).	See 43 FR 57254 (December 7, 1978)	None.
B. Education of the Handicapped Programs			
State-operated Programs for Handicapped Children	Sections 146-147 of the Elementary and Secondary Education Act (20 U.S.C. 2771-2772).	Parts 116 and 116b	13.428 and 13.427.
Assistance to States for Education of Handicapped Children.	Part B of the Education of the Handicapped Act (20 U.S.C. 1411-1418; 1420).	Part 121a	13.449.
Incentive Grants	Section 619 of the Education of the Handicapped Act (20 U.S.C. 1419).	Part 121m	13.449.
C. Occupational and Adult Education Programs			
State Vocational Education Programs	Part A of Title I of the Vocational Education Act (20 U.S.C. 2301-2461).	Part 104	13.493, 13.494, 13.495, 13.499, and 13.500.
Career Education—State Allotment Program	Career Education Incentive Act (except Sections 10, 11, and 12—See 45 CFR Part 100a) (20 U.S.C. 1201-2614).	Part 161	None.
State Adult Education Programs	Adult Education Act (except Sections 309, 314, 317, and 318—See 45 CFR Part 100a), (20 U.S.C. 1201-1211a).	Part 166	13.400.
D. Higher Education Programs			
Community Service and Continuing Education Programs (except Special Programs and Projects—See 45 CFR Part 100a).	Title I of the Higher Education Act (except Section 106) (20 U.S.C. 1001-1005; 1006-1011).	Part 173 (except Subpart C)	13.491.

Name of program	Authorizing statute	Implementing regulations (45 CFR)	CFDA No.
State Student Incentive Grant Program	Sections 415A–415E of the Higher Education Act (20 U.S.C. 1070c through 1070c–4).	Part 192	13.548.
Educational Information Centers Program	Sections 418A and 418B of the Higher Education Act (20 U.S.C. 1070d–2 and 1070d–3).	Part 137	13.585.
Incentive Grants for State Student Financial Assistance Training Program.	Section 493C of the Higher Education Act (20 U.S.C. 1088b–3).	Part 178a	13.582.
State Postsecondary Education Commissions Program—Intrastate Planning.	Section 1203(a) of the Higher Education Act (20 U.S.C. 1142b(a)).	Part 199a	13.550.
	E. Other Programs		
Library Services, Public Library Construction and Interlibrary Cooperation.	Library Services and Construction Act (20 U.S.C. 351–355e–2).	Part 130	13.464, 13.408, and 13.465.
Assistance to States for State Equalization Plans	Section 842 of the Education Amendments of 1974 (20 U.S.C. 246).	None	13.572.

§100b.2 Exceptions in program regulations to Part 100b.

If a program has regulations that are not consistent with Part 100b, the implementing regulations for that program identify the sections of Part 100b that do not apply.

(20 U.S.C. 1221e–3(a)(1))

§100b.3 HEW general grant regulations apply to these programs.

The HEW general grant regulations in 45 CFR Part 74 apply to the programs covered by this part. To find subjects covered under 45 CFR Part 74, look in the table of contents at the beginning of 45 CFR Part 74.

(20 U.S.C. 1221e–3(a)(1))

Eligibility for a Grant or Subgrant

§ 100b.50 Statutes determine eligibility and whether subgrants are made.

(a) Under a program listed in § 100b.1, the Commissioner makes a grant—

(1) To the State agency designated by the authorizing statute for the program; or

(2) To the State agency designated by the State in accordance with the authorizing statute.

(b) The authorizing statute determines the extent to which a State may—

(1) Use grant funds directly; and

(2) Make subgrants to eligible applicants.

(c) The regulations in Part 100b on subgrants apply to a program only if subgrants are authorized under that program.

(d) The authorizing statute determines the eligibility of an applicant for a subgrant.

(20 U.S.C. 1221e–3(a)(1))

Cross-reference.—See 45 CFR Part 74, Subpart E—Waiver of Single State Agency Requirements.

§ 100b.51 A State distributes funds by formula or competition.

If a program statute authorizes a State to make subgrants, the statute—

(a) Requires the State to use a formula to distribute funds;

(b) Gives the State discretion to select subgrantees through a competition among the applicants or through some other procedure; or

(c) Allows some combination of these procedures.

(20 U.S.C. 1221e–3(a)(1))

Subpart B—How a State Applies for a Grant

State Plans and Applications

§ 100b.100 Effect of this subpart

This subpart establishes general requirements that a State must meet to apply for a grant under a program listed in § 100b.1. Additional requirements are in the authorizing statute and the implementing regulations for the program.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.101 The general State application

(a) This section applies to the programs listed in § 100b.1 under which a State educational agency may make subgrants to local educational agencies.

(b)(1) A State shall submit to the Commissioner a general application that contains the assurances contained in paragraph (e) of this section.

(2) The State may submit—

(i) A single general application to cover all of the programs; or

(ii) More than one general application, each general application covering either a group of programs or an individual program.

(c) A general application must be approved by each official, agency, board, or other entity within the State that, under State law, is primarily responsible for supervision of the activities conducted under each program covered by the application.

(d) Each general application submitted under this section remains in effect for the duration of any program it covers. The Commissioner does not require the resubmission or amendment of that application unless required by changes in Federal or State law or by other significant changes in the circumstances affecting an assurance in that application.

(e) A general application must include assurances, satisfactory to the Commissioner—

(1) That each program will be administered in accordance with all applicable statutes, regulations, State plans, and applicaitons;

(2) That the control of funds provided under each program and title to property acquired with program funds will be in a public agency, or in a nonprofit private agency, institution, or organization if the statute authorizing the program provides for grants to those entities, and that the public agency or nonprofit private

agency, institution, or organization will administer the funds and property;

(3) That the State will adopt and use proper methods of administering each program, including—

(i) Monitoring of agencies, institutions, and organizations responsible for carrying out each program, and the enforcement of any obligations imposed on those agencies, institutions, and organizations under law;

(ii) Providing technical assistance, if necessary, to those agencies, institutions, and organizations;

(iii) Encouraging the adoption of promising or innovative educational techniques by those agencies, institutions, and organizations;

(iv) The dissemination throughout the State of information on program requirements and sucessful practices; and

(v) The correction of deficiencies in program operations that are identified through monitoring or evaluation;

(4) That the State will evaluate the effectiveness of each program in meeting statutory objectives—not less often than once every three years—and that the State will cooperate in carrying out any evaluation of a program conducted by or for the Secretary or other Federal official;

(5) That the State will use fiscal control and fund accounting procedures that will ensure proper disbursement of, and accounting for, Federal funds paid to the State under each program;

(6) That the State will—

(i) Make reports to the Commissioner—including reports on the results of evaluations required under paragraph (e)(4) of this section—as may reasonably be necessary to enable the Commissioner to perform his or her duties under each program; and

(ii) Maintain records, in accordance with the requirements of Section 437 of GEPA—and afford access to those records as the Commissioner may find necessary to carry out his or her duties; and

(7) That the State will provide reasonable opportunities for the participation by local agencies, representatives of the class of individuals affected by each program, and other interested institutions, organizations, and individuals in the planning for and operation of each program, including the following:

(i) The State will consult with relevant advisory committees, local agencies, interest groups, and experienced professionals in the development of State plans.

(ii) The State will publish each proposed State plan, in a manner that will ensure circulation throughout the State, at least 60 days prior to the date on which the plan is submitted to the Commissioner or on which the plan becomes effective, whichever occurs earlier, with an opportunity for public comments on the plan to be accepted for at least 30 days.

(iii) The State will hold public hearings on the proposed State plans if required by the Commissioner by regulation.

(iv) The State will provide an opportunity for interested agencies, organizations, and individuals to suggest improvements in the administration of the program and to allege that there has been a failure by any entity to comply with applicable statutes and regulations.

(20 U.S.C. 1232d)

Note.—The Commissioner interprets Section 435 of GEPA—implemented in this section—not to apply to State Vocational Education Programs. (See § 100b.1) This interpretation is based on the legislative history of both GEPA and the Vocational Education Act.

§ 100b.102 Definition of "State plan" for Part 100b.

As used in this part, "State plan" means any of the following documents that a State submits to the Commissioner under a program listed in § 100b.1:

(a) *Compensatory education.* The application under Section 162 of Title I of the Elementary and Secondary Education Act.

(b) *Migrant children.* The application under Sections 141–143 of the Elementary and Secondary Education Act.

(c) *Basic skills.* The agreement under Title II–B of the Elementary and Secondary Education Act.

(d) *Library resources.* The State plan under Title II of the Elementary and Secondary Education Act (as in effect on Sept. 30, 1978).

(e) *Innovative projects; Guidance and Counseling.* The State plan under Title III of the Elementary and Secondary Education Act (as in effect on Sept. 30, 1978).

(f) *Educational Improvement, Resources, and Support.* The State plan under Title IV of the Elementary and Secondary Education Act.

(g) *State educational agencies.* The State plan under Title V–B of the Elementary and Secondary Education Act.

(h) *State educational agencies.* The application under Title V–A of the Elementary and Secondary Education Act (as in effect September 30, 1978).

(i) *Community schools.* The State plan under Title VIII of the Elementary and Secondary Education Act.

(j) *Gifted and talented children.* The application under Section 904(b)(1) of Title IX of the Elementary and Secondary Education Act.

(k) *Academic subjects.* The State plan under Title III–A of the National Defense Education Act.

(l) *Handicapped children.* The State plan under Part B of the Education of the Handicapped Act.

(m) *Handicapped children.* The application under Section 619 of the Education of the Handicapped Act.

(n) *Vocational education.* The annual program plan and the annual accountability report under Part A of Title I of the Vocational Education Act.

(o) *Career education.* The State plan under Section 7 of the Career Education Incentive Act.

(p) *Adult education.* The State plan under the Adult Education Act.

(q) *Community services.* The State plan under Title I of the Higher Education Act.

(r) *State student incentive grants.* The application under Section 415C of the Higher Education Act.

(s) *Educational information centers.* The State plan under Section 418B of the Higher Education Act.

(t) *Incentive grants for State student financial assistance training.* The application under Section 493C of the Higher Education Act.

(u) *Postsecondary commissions.* The application for intrastate planning under Section 1203(a) of the Higher Education Act.

(v) *Libraries.* The basic State plan and the annual programs under the Library Services and Construction Act.

(w) *State equalization.* The application under Section 842 of the Education Amendments of 1974.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.103 Three-year State plans.

(a) Beginning no later than fiscal year 1981, each State plan will be effective for a period of three fiscal years, unless the program regulations provide for a longer effective period.

(b) If the Commissioner determines that the three-year State plans under a program should be submitted by the States on a staggered schedule, the Commissioner may require groups of States to submit or resubmit their plans in different years.

(c) This section does not apply to—

(1) The annual accountability report under Part A of Title I of the Vocational Education Act;

(2) The annual programs under the Library Services and Construction Act; and

(3) The application under Sections 141–143 of the Elementary and Secondary Education Act.

(d) A State may submit an annual State plan under the Vocational Education Act. If a State submits an annual plan under that program, this section does not apply to that plan.

(20 U.S.C. 1231g(a))

§ 100b.104 A State shall include certain certifications in its State plan.

(a) A State shall include the following certifications in each State plan:

(1) That the plan is submitted by the State agency that is eligible to submit the plan.

(2) That the State agency has authority under State law to perform the functions of the State under the program.

(3) That the State legally may carry out each provision of the plan.

(4) That all provisions of the plan are consistent with State law.

(5) That a State officer, specified by title in the certification, has authority under State law to receive, hold, and disburse Federal funds made available under the plan.

(6) That the State officer who submits the plan, specified by title in the certification, has authority to submit the plan.

(7) That the agency that submits the plan has adopted or otherwise formally approved the plan.

(8) That the plan is the basis for State operation and administration of the program.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.105 The Governor has 45 days to comment on the State plan.

(a) Before a State submits a State plan to the Commissioner, the State shall give its Governor 45 days to comment on the plan.

(b) The State shall attach to the plan any comments the Governor makes.

(c) If the Governor does not comment, the offical who submits the State plan shall certify that—

(1) The State submitted the plan to the Governor at least 45 days before submitting it to the Commissioner; and

(2) The Governor did not comment.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.106 State documents are public information.

A State shall make the following documents available for public inspection:

(a) All State plans and related official materials.

(b) All approved subgrant applications.

(c) All documents that the Commissioner transmits to the State regarding a program.

(20 U.S.C. 1221e–3(a)(1))

Amendments

Cross-reference.—See 45 CFR Part 74, Subpart L—Programmatic Changes and Budget Revisions.

§ 100b.140 Amendments to a State plan.

(a) If the Commissioner determines that an amendment to a State plan is essential during the effective period of the plan, the State shall make the amendment.

(b) A State shall also amend a State plan if there is a significant and relevant change in—

(1) The information or the assurances in the plan;

(2) The administration or operation of the plan; or

(3) The organization, policies, or operations of the State agency that received the grant, if the change materially affects the information or assurances in the plan.

(20 U.S.C. 1221e–3(a)(1); 1231g(a))

§ 100b.141 An amendment requires the same procedures as the document being amended.

If a State amends a State plan under § 100b.140, the State shall use the same procedures as those it must use to prepare and submit a State plan.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.142 An amendment is approved on the same basis as the document being amended.

The Commissioner uses the same procedures to approve an amendment to a State plan—or any other document a State submits—as the Commissioner uses to approve the original document.

(20 U.S.C. 1221e–3(a)(1))

Subpart C—How a Grant Is Made to a State

Approval or Disapproval by the Commissioner

§ 100b.201 A State plan must meet all statutory and regulatory requirements.

The Commissioner approves a State plan if it meets the requirements of the Federal statutes and regulations that apply to the plan.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.202 Opportunity for a hearing before a State plan is disapproved.

The Commissioner may disapprove a State plan only after—

(a) Notifying the State;

(b) Offering the State a reasonable opportunity for a hearing; and

(c) Holding the hearing, if requested by the State.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.235 The notification of grant award.

(a) To make a grant to a State, the Commissioner issues and sends to the State a notification of grant award.

(b) The notification of grant award tells the amount of the grant and provides other information about the grant.

(20 U.S.C. 1221e–3(a)(1))

Allotments and Reallotments of Grant Funds

§ 100b.260 Allotments are made under program statute.

(a) The Commissioner allots program funds to a State in accordance with the authorizing statute for the program.

(b) Any reallotment to other States will be made by the Commissioner in accordance with the authorizing statute for that program.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.261 Reallotted funds are part of a State's grant.

Funds that a State receives as a result of a reallotment are part of the State's grant for the appropriate fiscal year. However, the Commissioner does not consider a reallotment in determining the maximum or minimum amount to which a State is entitled for a following fiscal year.

(20 U.S.C. 1221e–3(a)(1))

Subpart D—How To Apply to the State for a Subgrant

§ 100b.300 Contact the State for procedures to follow.

An applicant for a subgrant can find out the procedures it must follow by contacting the State agency that administers the program.

(20 U.S.C. 1221e–3(a)(1))

Cross-reference.—See Subparts E and G of this part for the general responsibilities of the State regarding applications for subgrants.

§ 100b.301 Local educational agency general application.

(a) A local educational agency that applies for subgrants under one or more programs listed in § 100b.1 shall submit to the State a general application that contains the assurances contained in paragraph (c) of this section. That application covers the participation by that local educational agency in all of those programs.

(b) A general application submitted under this section remains in effect for the duration of the programs it covers.

The State agencies or boards administering the programs covered by the application may not require the resubmission or amendment of the application unless required by a change in Federal or State law or by other significant changes in the circumstances affecting an assurance in the application.

(c) The general application submitted by a local educational agency must include assurances—

(1) That the local educational agency will administer each program covered by the application in accordance with all applicable statutes, regulations, program plans, and applications;

(2) That the control of funds provided to the local educational agency under each program and title to property acquired with those funds will be in a public agency and that a public agency will administer those funds and property;

(3) That the local educational agency will use fiscal control and fund accounting procedures that will ensure proper disbursement of, and accounting for, Federal funds paid to that agency under each program;

(4) That the local educational agency will—

(i) Make reports to the State agency or board and to the Commissioner as may reasonably be necessary to enable the State agency or board and the Commissioner to perform their duties;

(ii) Maintain records—including the records required under Section 437 of GEPA—and provide access to those records as the State agency or board or the Commissioner decides are necessary to perform their duties;

(5) That the local educational agency will provide reasonable opportunities for the participation by teachers, parents, and other interested agencies, organizations, and individuals in the planning for and operation of each program;

(6) That any application, evaluation, periodic program plan or report relating to each program will be made readily available to parents and other members of the general public;

(7) That in the case of any project involving construction—

(i) The project is not inconsistent with overall State plans for the construction of school facilities; and

(ii) In developing plans for construction, due consideration will be given to excellence of architecture and design and to compliance with standards prescribed by the Secretary under Section 504 of the Rehabilitation Act of 1973 in order to ensure that facilities constructed with the use of Federal funds are accessible to and usable by handicapped individuals; and

(8) That the local educational agency has adopted effective procedures for—

(i) Acquiring and disseminating to teachers and administrators participating in each program, significant information from educational research, demonstrations, and similar projects; and

(ii) Adopting, if appropriate, promising educational practices developed through those projects.

(20 U.S.C. 1232e)

§ 100b.302 The notice to the subgrantee.

A State shall notify a subgrantee in writing of—

(a) The amount of the subgrant;

(b) The period during which the subgrantee may obligate the funds; and

(c) The Federal requirements that apply to the subgrant.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.303 Joint applications and projects.

(a) Two or more eligible parties may submit a joint application for a subgrant.

(b) If the State must use a formula to distribute subgrant funds (see § 100b.31), the State may not make a subgrant that exceeds the sum of the entitlements of the separate subgrantees.

(c) If the State funds the application, each subgrantee shall—

(1) Carry out the activities that the subgrantee agreed to carry out; and

(2) Use the funds in accordance with Federal requirements.

(d) Each subgrantee shall use an accounting system that permits identification of the costs paid for under its subgrant.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.304 Subgrantee shall make subgrant application available to the public.

A subgrantee shall make any application, evaluation, periodic program plan, or report relating to each program available for public inspection.

(20 U.S.C. 1221e–3(a)(1); 1232e)

§ 100b.305 Amendments to applications.

If a subgrantee makes a significant amendment to its application, the subgrantee shall use the same procedures as those it must use to submit an application.

(20 U.S.C. 1221e–3(a)(1))

Cross-reference.—See 45 CFR Part 74, Subpart L—Programmatic Changes and Budget Revisions.

Subpart E—How a Subgrant Is Made to an Applicant

§ 100b.400 State procedures for reviewing an application.

A State that receives an application for a subgrant shall take the following steps:

(a) *Review.* The State shall review the application.

(b) *Approval—entitlement programs.* The State shall approve an application if—

(1) The application is submitted by an applicant that is entitled to receive a subgrant under the program; and

(2) The applicant meets the requirements of the Federal statutes and regulations that apply to the program.

(c) *Approval—discretionary programs.* The State may approve an application if—

(1) The application is submitted by an eligible applicant under a program in which the State has the discretion to select subgrantees;

(2) The applicant meets the requirements of the Federal statutes and regulations that apply to the program; and

(3) The State determines that the project should be funded under the authorizing statute and implementing regulations for the program.

(d) *Disapproval—entitlement and discretionary programs.* If an application does not meet the requirements of the Federal statutes and regulations that apply to a program, the State shall not approve the application.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.401 Disapproval of an application—opportunity for a hearing.

(a) *State agency hearing before disapproval.* Under the following programs listed in § 100b.1, the State agency that administers the program shall provide an applicant with notice and an opportunity for a hearing before it may disapprove the application:

(1) Financial Assistance to Local Educational Agencies to Meet the Special Educational Needs of Educationally Deprived Children.

(2) Grants to State Agencies for Programs To Meet the Special Educational Needs of Children in Institutions for Neglected or Delinquent Children.

(3) Supplementary Centers and Services, Guidance, Counseling, and Testing Programs.

(4) Strengthening Instruction in Academic Subjects in Public Schools.

(5) State-operated Programs for Handicapped Children.

(6) Assistance to States for Education of Handicapped Children.

(7) State Vocational Education Programs.

(b) *Other programs—hearings not required.* Under the other programs listed in § 100b.1, a State agency—other than a State educational agency—is not required to provide an opportunity for a hearing regarding the agency's disapproval of an application.

(c) If an applicant for a subgrant alleges that any of the following actions of a State educational agency violates a State or Federal statute or regulation, the State educational agency and the applicant shall use the procedures in paragraph (d) of this section:

(i) Disapproval of or failure to approve the application or project in whole or in part.

(ii) Failure to provide funds in amounts in accordance with the requirements of statutes and regulations.

(d) *State educational agency hearing procedures.*

(1) If the applicant applied under a program listed in paragraph (a) of this section, the State educational agency shall provide an opportunity for a hearing before the agency disapproves the application.

(2) If the applicant applied under a program not listed in paragraph (a) of this section, the State educational agency shall provide an opportunity for a hearing either before or after the agency disapproves the application.

(3) The applicant shall request the hearing within 30 days of the action of the State educational agency.

(4)(i) Within 30 days after it receives a request, the State educational agency shall hold a hearing on the record and shall review its action.

(ii) No later than 10 days after the hearing the agency shall issue its written ruling, including findings of fact and reasons for the ruling.

(iii) If the agency determines that its action was contrary to State or Federal statutes or regulations that govern the applicable program, the agency shall rescind its action.

(5) If the State educational agency does not rescind its final action after a review under this paragraph, the applicant may appeal to the Commissioner. The applicant shall file a notice of the appeal with the Commissioner within 20 days after the applicant has been notified by the State educational agency of the results of the agency's review. If supported by substantial evidence, findings of fact of the State educational agency are final.

(6)(i) The Commissioner may also issue interim orders to State educational agencies as he or she may decide are necessary and appropriate pending appeal or review.

(ii) If the Commissioner determines that the action of the State educational agency was contrary to Federal statutes or regulations that govern the applicable program, the Commissioner issues an order that requires the State educational agency to take appropriate action.

(7) Each State educational agency shall make available at reasonable times and places to each applicant all records of the agency pertaining to any review or appeal the applicant is conducting under this section, including records of other applicants.

(8) If a State educational agency does not comply with any provision of this section, or with any order of the Commissioner under this section, the Commissioner immediately terminates all assistance to the State educational agency under the applicable program.

(e) *Other State agency hearing procedures.* State agencies that are required to provide a hearing under paragraph (a) of this section—other than State educational agencies—are not required to use the procedures in paragraph (d) of this section.

(20 U.S.C. 1221e–3(a)(1); 1231b–2)

Subpart F—What Conditions Must Be Met by the State and Its Subgrantees?

Nondiscrimination

§ 100b.500 Federal statutes and regulations on nondiscrimination.

A State and a subgrantee shall comply with the following statutes and regulations:

Subject	Statute	Regulation
Discrimination on the basis of race, color, or national origin.	Title VI of the Civil Rights Act of 1964 (45 U.S.C. 2000d through 2000d–4).	45 CFR Part 80.
Discrimination on the basis of sex.	Title IX of the Education Amendments of 1972 (20 U.S.C. 1681–1683).	45 CFR Part 86.
Discrimination on the basis of handicap.	Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).	45 CFR Part 84.
Discrimination on the basis of age.	The Age Discrimination Act (42 U.S.C. 6101 *et seq.*).	45 CFR Part 90.

(20 U.S.C. 1221e–3(a)(1))

Allowable Costs

§ 100b.530 General cost principles.

Subpart Q of 45 CFR Part 74 references the general cost principles that apply to grants, subgrants, and cost-type contracts under grants and subgrants.

(20 U.S.C. 1221e–3(a)(1))

Cross-reference.—See 45 CFR Part 74, Subpart G—Matching or Cost Sharing.

§ 100b.532 Use of funds for religion prohibited.

(a) No State or subgrantee may use its grant or subgrant to pay for any of the following:

(1) Religious worship, instruction, or proselytization.

(2) Equipment or supplies to be used for any of the activities specified in paragraph (a)(1) of this section.

(3) Construction, remodeling, repair, operation, or maintenance of any facility or part of a facility to be used for any of the activities specified in paragraph (a)(1) of this section.

(4) An activity of a school or department of divinity.

(b) As used in this section, "school or department of divinity" means [illegible] institution or a component of an institution whose program is specifically for the education of students to—

(1) Prepare them to enter into a religious vocation; or

(2) Prepare them to teach theological subjects.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.533 Acquistion of real property; construction.

No State or subgrantee may use its grant or subgrant for acquisition of real property or for construction unless specifically permitted by the authorizing statute or implementing regulations for the program.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.534 Use of tuition and fees restricted.

No State or subgrantee may count tuition and fees collected from students toward meeting matching, cost sharing, or maintenance of effort requirements of a program.

(20 U.S.C. 1221e–3(a)(1))

Indirect Cost Rates

§ 100b.560 General indirect cost rates; exceptions.

(a) Appendices B–D to 45 CFR Part 74 include—

(1) A description of the difference between direct and indirect costs; and

(2) The principles for determining the general indirect cost rate that a State or subgrantee may use under some programs.

(b) Section 100b.562 provides restrictions on indirect cost rates under certain programs.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.561 Approval of indirect cost rates.

(a) The Commissioner approves an indirect cost rate for a State agency and for a subgrantee other than a local educational agency. For the purposes of this section, the term "local educational agency" does not include a State agency.

(b) Each State educational agency, on the basis of a plan approved by the Commissioner, shall approve an indirect cost rate for each local educational agency that requests it to do so.

(c) Each indirect cost rate must be approved annually.

(20 U.S.C. 1221e-3(a)(1))

§ 100b.563 Restricted indirect cost rate—programs covered.

A State and a subgrantee shall use a restricted indirect cost rate, computed under 45 CFR 100a.564–100a.566, for each program listed in § 100b.1 that has a statutory requirement not to use Federal funds to supplant non-Federal funds. These programs include the following:

Program	Authorizing statute
Financial Assistance to Local Educational Agencies To Meet the Special Educational Needs of Educationally Deprived Children.	Title I–A of the Elementary and Secondary Education Act.
Grants to State Agencies for Programs To Meet the Special Educational Needs of Children in Institutions for Neglected or Delinquent Children.	Sections 151–153 of the Elementary and Secondary Education Act.
Grants to State Agencies for Programs To Meet the Special Educational Needs of Migratory Children.	Sections 141–143 of the Elementary and Secondary Education Act.
State Basic Skills Improvement Program.	Title II of the Elementary and Secondary Education Act.
Financial Assistance for School Library Resources, Textbooks, and other Instructional Materials.	Title II of the Elementary and Secondary Education Act (as in effect Sept. 30, 1978).
Supplementary Centers and Services, Guidance, Counseling, and Testing Programs.	Title III of the Elementary and Secondary Education Act (as in effect Sept. 30, 1978).
Strengthening Instruction on Academic Subjects in Public Schools.	Title III–A of the National Defense Education Act.
State-operated Programs for Handicapped Children.	Sections 146–147 of the Elementary and Secondary Education Act.
Assistance to States for Education of Handicapped Children.	Part B of the Education of the Handicapped Act.
State Vocational Education Programs.	Part A of Title I of the Vocational Education Act.
Community Service and Continuing Education Programs.	Title I of the Higher Education Act.

(20 U.S.C. 1221e-3(a)(1))

Coordination

§ 100b.580 Coordination with other activities.

(a) A State and a subgrantee shall, to the extent possible, coordinate each of its projects with other activities that are in the same geographic area served by the project and that serve similar purposes and target groups.

(b) A State and a subgrantee whose project includes activities to improve the basic skills of children, youth, or adults shall, to the extent possible, coordinate its project with other basic skills activities that are in the same geographic area served by the project.

(c) For the purposes of this section, "basic skills" means reading, mathematics, and effective communication, both written and oral.

(d) The State or subgrantee shall continue its coordination during the period that it carries out the project.

(20 U.S.C. 1221e-3(a)(1); 2880)

§ 100b.581 Methods of coordination.

Depending on the objectives and requirements of a project, a grantee shall use one or more of the following methods of coordination:

(a) Planning the project with organizations and individuals who have similar objectives or concerns.

(b) Sharing information, facilities, staff, services, or other resources.

(c) Engaging in joint activities such as instruction, needs assessment evaluation, monitoring, technical assistance, or staff training.

(d) Using the grant or subgrant funds so as not to duplicate or counteract the effects of funds used under other programs.

(e) Using the grant or subgrant funds to increase the impact of funds made available under other programs.

(20 U.S.C. 1221e-3(a)(1))

Evaluation

§ 100b.591 Federal evaluation—cooperation by a grantee.

A State and a subgrantee shall cooperate in any evaluation of a program by the Secretary or the Commissioner.

(20 U.S.C. 1226c; 1231a)

§ 100b.592 Federal evaluation—satisfying requirement for State or subgrantee evaluation.

If a State or a subgrantee cooperates in a Federal evaluation of a program, the Commissioner may determine that the State or subgrantee meets the evaluation requirements of the program.

(20 U.S.C. 1226c; 1231a)

Construction

Cross-reference.—See 45 CFR Part 74, Subpart P—Procurement Standards.

§ 100b.600 Where to find construction regulations.

(a) A State or a subgrantee that requests program funds for construction, or whose grant or subgrant includes funds for construction, shall comply with the rules on construction that apply to applicants and grantees under 45 CFR 100a.600–100a.615.

(b) The State shall perform the functions that the appropriate official of the Education Division performs under 45 CFR 100a.602 (Preservation of historic sites) and 100a.605 (Approval of drawings and specifications).

(c) The State shall provide to the Commissioner the information required under 45 CFR 100a.602(a) (Preservation of historic sites).

(20 U.S.C. 1221e-3(a)(1))

Participation of Students Enrolled in Private Schools

§ 100b.650 Private schools; purpose of §§ 100b.651–100b.662.

(a) Under some programs, the authorizing statute requires that a State and its subgrantees provide for participation by students enrolled in private schools. Sections 100b.651–100b.662 apply to those programs and provide rules for that participation. These sections do not affect the authority of the State or a subgrantee to enter into a contract with a private party.

(b) If any other rules for participation of students enrolled in private schools apply under a particular program, they are in the authorizing statute or implementing regulations for that program.

(20 U.S.C. 1221e-3(a)(1)).

Note.—Some program statutes authorize the Commissioner—under certain circumstances—to provide benefits directly to private school students. These "bypass" provisions—where they apply—are implemented in the individual program regulations.

§ 100b.651 Responsibility of a State and a subgrantee.

(a)(1) A subgrantee shall provide students enrolled in private schools with a genuine opportunity for equitable participation in accordance with the requirements in §§ 100b.652–100b.662 and in the authorizing statute and implementing regulations for a program.

(2) The subgrantee shall provide that opportunity to participate in a manner that is consistent with the number of eligible private school students and their needs.

(3) The subgrantee shall maintain continuing administrative direction and control over funds and property that benefit students enrolled in private schools.

(b)(1) A State shall ensure that each subgrantee complies with the requirements in §§100b.651–100b.662.

(2) If a State carries out a project directly, it shall comply with these requirements as if it were a subgrantee.

(20 U.S.C. 1221e-3(a)(1))

§ 100b.652 Consultation with representatives of private school students.

(a) An applicant for a subgrant shall consult with appropriate representatives of students enrolled in private schools during all phases of the development and design of the project covered by the application, including consideration of—

(1) Which children will receive benefits under the project;

(2) How the children's needs will be identified;

(3) What benefits will be provided;

(4) How the benefits will be provided; and

(5) How the project will be evaluated.

(b) A subgrantee shall consult with appropriate representatives of students enrolled in private schools before the subgrantee makes any decision that affects the opportunities of those students to participate in the project.

(c) The applicant or subgrantee shall give the appropriate representatives a genuine opportunity to express their views regarding each matter subject to the consultation requirements in this section.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.653 Needs, number of students, and types of services.

A subgrantee shall determine the following matters on a basis comparable to that used by the subgrantee in providing for participation of public school students:

(a) The needs of students enrolled in private schools.

(b) The number of those students who will participate in a project.

(c) The benefits that the subgrantee will provide under the program to those students.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.654 Benefits for private school students.

(a) *Comparable benefits.* The program benefits that a subgrantee provides for students enrolled in private schools must be comparable in quality, scope, and opportunity for participation to the program benefits that the subgrantee provides for students enrolled in public schools.

(b) *Same Benefits.* If a subgrantee uses funds under a program for public school students in a particular attendance area, or grade or age level, the subgrantee shall insure equitable opportunities for participation by students enrolled in private schools who—

(1) Have the same needs as the public school students to be served; and

(2) Are in that group, attendance area, or age or grade level.

(c) *Different benefits.* If the needs of students enrolled in private schools are different from the needs of students enrolled in public schools, a subgrantee shall provide program benefits for the private school students that are different from the benefits the subgrantee provides for the public school students.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.655 Level of expenditures for students enrolled in private schools.

(a) Subject to paragraph (b) of this section, a subgrantee shall spend the same average amount of program funds on—

(1) A student enrolled in a private school who receives benefits under the program; and

(2) A student enrolled in a public school who receives benefits under the program.

(b) The subgrantee shall spend a different average amount on program benefits for students enrolled in private schools if the average cost of meeting the needs of those students is different from the average cost of meeting the needs of students enrolled in public schools.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.656 Information in an application for a subgrant.

An applicant for a subgrant shall include the following information in its application:

(a) A description of how the applicant will meet the Federal requirements for participation of students enrolled in private schools.

(b) The number of students enrolled in private schools who have been identified as eligible to benefits under the program.

(c) The number of students enrolled in private schools who will receive benefits under the program.

(d) The basis the applicant used to select the students.

(e) The manner and extent to which the applicant complied with § 100b.652 (consultation).

(f) The places and times that the students will receive benefits under the program.

(g) The differences, if any, between the program benefits the applicant will provide to public and private school students, and the reasons for the differences.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.657 Separate classes prohibited.

A subgrantee may not use program funds for classes that are organized separately on the basis of school enrollment or religion of the students if—

(a) The classes are at the same site; and

(b) The classes include students enrolled in public schools and students enrolled in private schools.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.658 Funds not to benefit a private school.

(a) A subgrantee may not use program funds to finance the existing level of instruction in a private school or to otherwise benefit the private school.

(b) The subgrantee shall use program funds to meet the specific needs of students enrolled in private schools, rather than—

(1) The needs of a private school; or

(2) The general needs of the students enrolled in a private school.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.659 Use of public school personnel.

A subgrantee may use program funds to make public personnel available in other than public facilities—

(a) To the extent necessary to provide equitable program benefits designed for students enrolled in a private school; and

(b) If those benefits are not normally provided by the private school.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.660 Use of private school personnel.

A subgrantee may use program funds to pay for the services of an employee of a private school if—

(a) The employee performs the services outside of his or her regular hours of duty; and

(b) The employee performs the services under public supervision and control.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.661 Equipment and supplies.

(a) Under some program statutes, a public agency must keep title to and exercise continuing administrative control of all equipment and supplies that the subgrantee acquires with program funds. This public agency is usually the subgrantee.

(b) The subgrantee may place equipment and supplies in a private school for the period of time needed for the project.

(c) The subgrantee shall insure that the equipment or supplies placed in a private school—

(1) Are used only for the purposes of the project; and

(2) Can be removed from the private school without remodeling the private school facilities.

(d) The subgrantee shall remove equipment or supplies from a private school if—

(1) The equipment or supplies are no longer needed for the purposes of the project; or

(2) Removal is necessary to avoid use of the equipment of supplies for other than project purposes.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.662 Construction.

A subgrantee shall insure that program funds are not used for the construction of private school facilities.

(20 U.S.C. 1221e–3(a)(1))

Other Requirements for Certain Programs

Cross-reference.—See 45 CFR Part 74, Subpart C—Bonding and Insurance; and 45 CFR 74.144—Inventions and patents.

§ 100b.681 Protection of human research subjects.

If a State or a subgrantee uses a human subject in a research project, the State or subgrantee shall protect the person from physical, psychological, or social injury resulting from the project.

(20 U.S.C. 1221e–3(a)(1))

Cross-reference.—See 45 CFR Part 46—Protection of Human Research Subjects.

§ 100b.682 Treatment of animals.

If a State or a subgrantee uses an animal in a project, the State or subgrantee shall provide the animal with proper care and humane treatment in accordance with the Animal Welfare Act of 1970.

(Pub. L. 89–544, as amended)

§ 100b.683 Health or safety standards for facilities.

A State and a subgrantee shall comply with any Federal health or safety requirements that apply to the facilities that the State or subgrantee uses for a project.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.684 Day care services.

(a) If a State or a subgrantee uses program funds to provide any day care services, the State or subgrantee shall comply with the day care requirements in 45 CFR Part 71 of this title.

(b) The Commissioner may waive this requirement by publication of a notice in the **Federal Register.**

(20 U.S.C. 1221e–3(a)(1))

Subpart G—What Are the Administrative Responsibilities of the State and Its Subgrantees?

General Administrative Responsibilities

§ 100b.700 Compliance with statutes, regulations, State plan, and applications.

A State and a subgrantee shall comply with the State plan and applicable statutes, regulations, and approved applications, and shall use Federal funds in accordance with those statutes, regulations, plan, and applications.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.701 The State or subgrantee administers or supervises each project.

A State or a subgrantee shall directly administer or supervise the administration of each project.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.702 Fiscal control and fund accounting procedures.

A State and a subgrantee shall use fiscal control and fund accounting procedures that insure proper disbursement of and accounting for Federal funds.

(20 U.S.C. 1221e–3(a)(1))

Cross-reference.—See 45 CFR Part 74, Subpart B—Cash Depositories, Subpart H—Standards for Grantee and Subgrantee and Subgrantee Financial Management Systems, and Subpart K—Grant and Subgrant Payment Requirements.

§ 100b.703 When a State may begin to obligate funds.

(a) A State may not begin to obligate funds under a program until the later of the following two dates:

(1) The date that the State plan is mailed or hand delivered to the Commissioner in substantially approvable form.

(2) The date that the funds are first available for obligation by the Commissioner.

(b)(1) The State must show one of the following as proof of mailing:

(i) A legibly dated U.S. Postal Service postmark.

(ii) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(iii) A dated shipping label, invoice, or receipt from a commercial carrier.

(iv) Any other proof of mailing acceptable to the Commissioner.

(2) If a State plan is mailed through the U.S. Postal Service, the Commissioner does not accept either of the following as proof of mailing:

(i) A private metered postmark.

(ii) A mail receipt that is not dated by the U.S. Postal Service.

Note.—The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, a State should check with its local post office.

(c) After determining that a State plan is in substantially approvable form, the Commissioner informs the State of the date on which it could begin to obligate funds. Reimbursement for those obligations is subject to final approval of the State plan.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.704 When certain subgrantees may begin to obligate funds.

(a) If the authorizing statute for a program requires a State to make subgrants on the basis of a formula (see § 100b.5), the State may not authorize an applicant for a subgrant to obligate funds until the later of the following two dates:

(1) The date that the State may begin to obligate funds under § 100b.703; or

(2) The date that the applicant submits its application to the State in substantially approvable form.

(b) Reimbursement for obligations under paragraph (a) of this section is subject to final approval of the application.

(c) If the authorizing statute for a program gives the State discretion to select subgrantees, the State may not authorize an applicant for a subgrant to obligate funds until the subgrant is made. However, the State may approve pre-agreement costs in accordance with the cost principles that are appended to 45 CFR Part 74 (Appendices C–F).

(20 U.S.C. 1221e–3(a)(1))

§ 100b.705 Funds may be obligated during a "carryover period."

(a) If a State or a subgrantee does not obligate all of its grant or subgrant funds by the end of the fiscal year for which Congress appropriated the funds, it may obligate the remaining funds during a carryover period of one additional fiscal year.

(b) The State shall return to the Federal Government any carryover funds not obligated by the end of the carryover period by the State and its subgrantees.

(U.S.C. 1225(b))

§ 100b.706 Obligations made during a carryover period are subject to current statutes, regulations, and applications.

A State and a subgrantee shall use carryover funds in accordance with—

(a) The Federal statutes and regulations that apply to the program and are in effect for the carryover period; and

(b) Any State plan, or application for a subgrant, that the State or subgrantee is required to submit for the carryover period.

(20 U.S.C. 1225(b))

§ 100b.707 When obligations are made.

The following table shows when a State or a subgrantee makes obligations for various kinds of property and services.

If the obligation is for—	The obligation is made—
(a) Acquisition of real or personal property.	On the date on which the State or subgrantee makes a binding written commitment to acquire the property.
(b) Personal services by an employee of the State or subgrantee.	When the services are performed.
(c) Personal services by a contractor who is not an employee of the State or subgrantee.	On the date on which the State or subgrantee makes a binding written commitment to obtain the services.
(d) Performance of work other than personal services.	On the date on which the State or subgrantee makes a binding written commitment to obtain the work.
(e) Public utility services.	When the State or subgrantee receives the services.
(f) Travel.	When the travel is taken.
(g) Rental of real or personal property.	When the State or subgrantee uses the property.
(h) A pre-agreement cost that was properly approved by the State under the cost principles in appendices C–F to 45 CFR Part 74.	On the first day of the subgrant period.

(20 U.S.C. 1221e–3(a)(1))

Reports

Cross-reference.—See 45 CFR Part 74, Subpart I—Financial Reporting Requirements, and Subpart J—Monitoring and Reporting of Program Performance.

§ 100b.720 Financial and performance reports by a State.

(a) This section applies to a State's reports required under 45 CFR Part 74, Subparts I (financial reporting) and J (performance reporting).

(b) A state shall submit these reports annually, unless the Commissioner allows less frequent reporting.

(c) However, the Commissioner may, under 45 CFR 74.7 (Special grant or subgrant conditions) or 45 CFR 74.72(e) (Grantee accounting systems), require a State to report more frequently than annually.

(20 U.S.C., 1221e–3(a)(1))

§ 100b.722 A subgrantee makes reports required by the State.

A State may require a subgrantee to furnish reports that the State needs to carry out its responsibilities under the program.

(20 U.S.C. 1221e–3(a)(1))

Records

Cross-reference.—See 45 CFR Part 74, Subpart D—Retention and Access Requirements for Records.

§ 100b.730 Records related to grant funds.

A State and a subgrantee shall keep records that fully show—

(a) The amount of funds under the grant or subgrant;

(b) How the State or subgrantee uses the funds;

(c) The total cost of the project;

(d) The share of that cost provided from other sources; and

(e) Other records to facilitate an effective audit.

(20 U.S.C. 1232f)

§ 100b.731 Records related to compliance.

A State and a subgrantee shall keep records to show its compliance with program requirements.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.734 Record retention period.

Unless a longer period is required under 45 CFR Part 74, a State and a subgrantee shall retain records for five years after completion of the activity for which they use grant or subgrant funds.

(20 U.S.C. 1232f(a))

Cross-reference.—See 45 CFR 74.21 Length of retention period; and 74.22 Starting date of retention period.

Privacy

§ 100b.740 Protection of and accessibility to student records.

Most records on present or past students are subject to the requirements of Section 438 of GEPA and its implementing regulations under 45 CFR Part 99. (Section 438 is the Family Educational Rights and Privacy Act of 1974.)

(20 U.S.C. 1231g)

§ 100b.741 Protection of students' privacy in research and testing.

(a) If a project funded by the Office of Education is designed to explore or develop new or unproven teaching methods or techniques, the grantee must give parents or guardians of children who participate in the project access to instructional material that will be used in connection with the project, including teachers' manuals, films, tapes, or other supplementary instructional material.

(b) No student may be required, as part of any program of the Office of Education, to submit to psychiatric examination, testing, or treatment, or psychological examination, testing, or treatment, in which the primary purpose is to reveal information concerning—

(1) Political affiliations;

(2) Mental and psychological problems potentially embarrassing to the student or his family;

(3) Sex behavior and attitudes;

(4) Illegal, anti-social, self-incriminating and demeaning behavior;

(5) Critical appraisals of other individuals with whom respondents have close family relationships;

(6) Legally recognized privileged and analogous relationships, such as those of lawyers, physicians, and ministers; or

(7) Income—other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under the program—without the prior consent of the student (if the student is an adult or emancipated minor), or in the case of unemancipated minor, without the prior written consent of the parent.

(20 U.S.C. 1232h)

Use of Funds by States and Subgrantees

§ 100b.760 More than one program may assist a single activity.

A State or a subgrantee may use funds under more than one program to support different parts of the same project if the State or subgrantee meets the following conditions:

(a) The State or subgrantee complies with the requirements of each program with respect to the part of the project assisted with funds under that program.

(b) The State or subgrantee has an accounting system that permits identification of the costs paid for under each program.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.761 Federal funds may pay 100 percent of cost.

A State or a subgrantee may use program funds to pay up to 100 percent of the cost of a project if—

(a) The State or subgrantee is not required to match the funds; and

(b) The project can be assisted under the authorizing statute and implementing regulations for the program.

(20 U.S.C. 1221e–3(a)(1))

State Administrative Responsibilities

Cross-reference.—See 45 CFR Part 74, Subpart K—Grant and Subgrant Payment Requirements.

§ 100b.770 A State shall perform certain duties with respect to the applications for subgrants.

With respect to each program that authorizes subgrants, a State shall perform the following duties and any other duties required by statute or regulations:

(a) Disseminate information regarding the availability of funds under each program.

(b) Develop procedures for applicants to follow in completing and submitting applications for subgrants.

(c) Provide application forms.

(d) Assist applicants in applying for funds.

(e) Review applications and, within the limits of available funds, award subgrants.

(f) Notify each applicant as to whether it will receive a subgrant.

(g) Not act in any manner that prevents eligible applicants from applying under the program.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.771 A State shall encourage eligible applicants to apply.

(a) Each State shall make a reasonable effort to encourage eligible applicants to apply for subgrants.

(b) The State shall inform eligible applicants of—

(1) The availability of subgrants;

(2) The objectives of each program;

(3) The objectives of the State plan for each program;

(4) The assistance the State provides to an applicant in completing and submitting an application; and

(5) The procedures the State uses to select applications for funding.

(20 U.S.C. 1222c–3(a)(1))

§ 100b.772 Other responsibilities of the State.

(a) A State shall—

(1) Provide technical assistance to prospective applicants and subgrantees;

(2) Assist in the evaluation of projects;

(3) Develop and use procedures to monitor each project; and

(4) Develop procedures, issue rules, or take whatever action may be necessary to properly administer each program and to avoid illegal, imprudent, wasteful, or extravagant use of funds by the State or a subgrantee.

(b) This section applies to the program under Title IV of the Elementary and Secondary Education Act unless administrative funds for that program are appropriated under Title V–A of that Act.

(c) This section does not apply to the program under Title I of the Elementary and Secondary Education Act.

Cross-reference.—See § 100b.1 Programs to which Part 100b applies.

(20 U.S.C. 1221e–3(a)(1))

Complaint Procedures of the State

§ 100b.780 A State shall adopt complaint procedures.

(a) A State shall adopt written procedures for—

(1) Receiving and resolving any complaint that the State or a subgrantee is violating a Federal statute or regulations that apply to a program;

(2) Reviewing an appeal from a decision of a subgrantee with respect to a complaint; and

(3) Conducting an independent on-site investigation of a complaint if the State determines that an on-site investigation is necessary.

(b) [illegible] to the program under Title IV of the Elementary and Secondary Education Act unless administrative funds for that program are appropriated under Title V–A of that Act.

(c) Sections 100b.780–100b.782 do not apply to the program under Title I of the Elementary and Secondary Education Act.

Cross-reference.—See § 100b.1 Programs to which Part 100b applies.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.781 Minimum complaint procedures.

A State shall include the following in its complaint procedures:

(a) A time limit of 60 calendar days after the State receives a complaint—

(1) If necessary, to carry out an independent on-site investigation; and

(2) To resolve the complaint.

(b) An extension of the time limit under paragraph (a) of this section only if exceptional circumstances exist with respect to a particular complaint.

(c) The right to request the Commissioner to review the final decision of the State.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.782 An organization or individual may file a complaint.

An organization or individual may file a written signed complaint with a State. The complaint must include—

(a) A statement that the State or a subgrantee has violated a requirement of a Federal statute or regulations that apply to a program; and

(b) The facts on which the statement is based.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.783 State educational agency action—subgrantee's opportunity for a hearing.

(a) A subgrantee may request a hearing if it alleges that any of the following actions by the State educational agency violated a State or Federal statute or regulation:

(1) Ordering, in accordance with a final State audit resolution determination, the repayment of misspent or misapplied Federal funds; or

(2) Terminating further assistance for an approved project.

(b) The procedures in § 100b.401(c)(2)–(7) apply to any request for a hearing under this section.

(20 U.S.C. [illegible])

[illegible]

[illegible]

§ 100b.900 Waiver of regulations prohibited.

(a) No official, agent, or employee of HEW may waive any regulation that applies to an Office of Education program unless the regulation specifically provide that it may be waived.

(b) No act or failure to act by an official, agent, or employee of HEW can affect the authority of the Commissioner to enforce regulations.

(43 Dec. Comp. Gen. 31(1963))

§ 100b.901 Education Appeal Board.

(a) The Education Appeal Board, established under Part E of GEPA, has the following functions:

(1) Audit appeal hearings under Section 452 of GEPA.

(2) Withholding and termination hearings under Section 453 of GEPA.

(3) Cease and desist hearings under Section 453 of GEPA.

(4) Any other proceeding designated by the Commissioner.

(b) The regulations for the Education Appeal Board are in 45 CFR Part 100d.

(20 U.S.C. 1234)

§ 100b.902 Judicial review.

After a hearing by the Commissioner, a State is [illegible]

PART 100c—GENERAL

Sec.
100c.1 Definitions that apply to all Education Division programs.
100c.2 Records under the Freedom of Information Act.

Authority: Section 408(a)(1) of Pub. L. 90-247, 88 Stat. 559, 560, as amended (20 U.S.C. 1221e–3(a)(1)), unless otherwise noted.

§ 100a.1 Definitions that apply to all Education Division programs.

(a) Unless a statute or regulation provides otherwise, the definitions in this section apply to the regulations for—

(1) The Museum Services Program (45 CFR Part 64);

(2) Programs of the Office of Education (45 CFR Parts 100–199);

(3) Programs of the National Institute of Education (45 CFR Parts 1400–1499); and

(4) Programs of the Office of the Assistant Secretary for Education.

(b) The following terms used in the regulations listed in paragraph (a) of this section are defined in 45 CFR Part 74 (the section of 45 CFR Part 74 that contains the definition is given in the parentheses):

"*Budget*" (74.101)

"*Contract*" (includes definition of "Subcontract") (74.3)

"*Equipment*" (74.132)

"*Federally recognized Indian tribal government*" (74.3)

"*Grant*" (74.3)

"*Grantee*" (74.3)

"*HEW*" (74.3)

"*Local government*" (74.3)

"*Personal property*" (74.132)

"*Real property*" (74.132)

"*Recipient*" (74.3)

"*Subgrant*" (74.3)

"*Subgrantee*" (74.3)

"*Supplies*" (74.132)

(c) The following definitions also apply to the regulations listed in paragraph (a) of this section:

"*Acquisition*" means taking ownership of property, receiving the property as a gift, entering into a lease-purchase arrangement, or leasing the property. The term includes processing, delivery, and installation of property.

"*Applicant*" means a party requesting a grant or subgrant under a program of the Education Division.

"*Application*" means a request for a grant or subgrant under a program of the Education Division.

"*Appropriate official of the Education Division*" means the official that has overall administrative responsibility for an Education Division program. Depending on the program that [illegible] that official is one of the following:

(a) The Assistant Secretary.

(b) The Commissioner.

(c) The Director of the National Institute of Education.

(d) The Director of the Institute of Museum Services.

"*Assistant Secretary*" means the Assistant Secretary for Education of the Department of Health, Education, and Welfare or an official or employee of the Education Division acting for the Assistant Secretary under a delegation of authority.

"*Award*" means an amount of funds that the Education Division provides under a grant or contract.

"*Budget period*" means an interval of time into which a project period is divided for budgetary purposes.

"*Commissioner*" means the U.S. Commissioner of Education or an officer or employee of the Office of Education acting for the Commissioner under a delegation of authority.

"*Department*" means the Department of Health, Education, and Welfare.

"*Director of the Institute of Museum Services*" means the Director of the Institute of Museum Services or an officer or employee of the Institute of Museum Services acting for the Director under a delegation of authority.

"*Director of the National Institute of Education*" means the Director of the National Institute of Education or an officer or employee of the National Institute of Education acting for the Director under a delegation of authority.

"*EDGAR*" means the Education Division General Administrative Regulations (45 CFR Parts 100a, 100b, 100c, and 100d).

"*Education Division*" means the HEW agency, headed by the Assistant Secretary, that is composed of—

(a) The Office of the Assistant Secretary (which includes the National Center for Education Statistics);

(b) The Office of Education;

(c) The National Institute of Education; and

(d) The Institute of Museum Services.

"*Elementary school*" means a day or residential school that provides elementary education, as determined under State law.

"*Facilities*" means one or more structures in one or more locations.

"*Fiscal year*" means the Federal fiscal year—a period beginning on October 1 and ending on the following September 30.

"*GEPA*" means the General Education Provisions Act.

"*Grant period*" means the period for [illegible] which funds have been awarded.

"*Local educational agency*" means:

(a) A public board of education or other public authority legally constituted within a State for either administrative control of or direction of, or to perform service functions for, public elementary or secondary schools in—

(1) A city, county, township, school district, or other political subdivision of a State; or

(2) Such combination of school districts or counties a State recognizes as an administrative agency for its public elementary or secondary schools; or

(b) Any other public institution or agency that has administrative control and direction of a public elementary or secondary school.

(c) As used in 45 CFR Parts 104 and 105 (vocational education programs), the term also includes any other public institution or agency that has administrative control and direction of a vocational education program.

"*Minor remodeling*" means minor alterations in a previously completed building. The term also includes the extension of utility lines, such as water and electricity, from points beyond the confines of the space in which the minor remodeling is undertaken but within the confines of the previously completed building. The term does not include building construction, structural alterations to buildings, building maintenance, or repairs.

"*Nonprofit*," as applied to an agency, organization, or institution, means that it is owned and operated by one or more corporations or associations whose net earnings do not benefit, and cannot lawfully benefit, any private shareholder or entity.

"*Nonpublic*," as applied to an agency, organization, or institution, means that the agency, organization, or institution is nonprofit and is not under Federal or public supervision or control.

"*Preschool*" means the educational level from a child's birth to the time at which the State provides elementary education.

"*Private*," as applied to an agency, organization, or institution, means that it is not under Federal or public supervision or control.

"*Project*" means the activity described in an application.

"*Project period*" means the period for which the appropriate official of the Education Division approves a project.

"*Public*," as applied to an agency, organization, or institution, means that the agency, organization, or institution is under the administrative supervision or control of a government other than the Federal Government.

"*Secondary school*" means a day or residential school that provides secondary education as determined under State law. In the absence of State law, the Commissioner may determine, with respect to that State, whether the term includes education beyond the twelfth grade.

"*Secretary*" means the Secretary of the Department of Health, Education, and Welfare, or an official or employee

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of the Department acting for the Secretary under a delegation of authority.

"Service function," with respect to a local educational agency—

(a) Means an educational service that is performed by a legal entity—such as an intermediate agency—

(1)(i) Whose jurisdiction does not extend to the whole State; and

(ii) That is authorized to provide consultation, [illegible] services to public elementary or secondary [illegible]

[illegible] elementary or secondary schools.

(b) The term does not include a service that is performed by a cultural or educational resource.

"State" means any of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

"State educational agency" means the State board of education or other agency or officer primarily responsible for the supervision of public elementary and secondary schools in a State. In the absence of this officer or agency, it is an officer or agency designated by the Governor or State law.

"Work of art" means an item that is incorporated into facilities primarily because of its aesthetic value.

(20 U.S.C. 1221e–3(a)(1))

§ 100c.2 Records under the Freedom of Information Act.

The Education Division makes records available in accordance with the Freedom of Information Act and the Department's regulations in 45 CFR Part 5. The Education Division uses the fee schedule in 45 CFR 5.1.

(5 U.S.C. 552)

PART 100d—[illegible]

[illegible]

4. Part 100d of the General Provisions for Regulations for Office of Education Programs is revoked, and a new Part 100d—Education Appeal Board is added. (This document is published in today's Federal Register.)

PART 104—STATE VOCATIONAL EDUCATION PROGRAMS

§§ 104.263, 104.288, 104.291, 104.292, 104.553, 104.634 [Revoked]

§§ 104.171, 104.271, 104.301, 104.533, 104.612, 104.802 [Amended]

5. The following sections are revoked: §§ 104.171 (a) and (b); 104.263; 104.271 (a), (b), and (d); [illegible]

6. Section 104.3 is revised to read as follows:

§ 104.3 Regulations that apply to State Vocational Education Programs.

(a) *Regulations.* The following regulations apply to State Vocational Education Programs:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100b (State-Administered Programs) and Part 100c (Definitions).

(2) The regulations in this Part 104.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

7. Section 104.141(d) is revised to read as follows:

§ 104.141 Requirement for filing a general application.

* * * * *

(d) This general application is in place of the general State application required by 45 CFR 100b.101 of EDGAR.

* * * * *

8. Section 104.301 (c) and (d) are revised to read as follows:

§ 104.301 Application of Federal requirements.

* * * * *

(c) State and local funds that are [illegible] the State plan, and annual program plan.

(d) The Commissioner accepts only actual expenditures of State and local funds as part of the State's matching and maintenance of effort requirements. This means that the State may not use in-kind contributions as part of its matching and maintenance of effort requirements.

PART 105—COMMISSIONER'S DISCRETIONARY PROGRAMS OF VOCATIONAL EDUCATION

§§ 105.5, 105.6, 105.7, 105.209, 105.218, 105.507, 105.625 [Revoked]

§§ 105.506, 105.605, 105.614, 105.624, Appendix A [Amended]

9. The following sections are revoked: [illegible]

10. Section 105.3 is revised to read as follows:

§ 105.3 Regulations that apply to the Commissioner's Discretionary Programs of Vocational Education.

(a) *Regulations.* The following regulations apply to the Commissioner's Discretionary Programs of Vocational Education.

(1)(i) For Subparts 1, 2, 4, and 5—the Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(ii) For Subpart 3—EDGAR 45 CFR Part 100c only.

(2) The regulations in this Part 105.

(b) *How to use regulations; how to apply for funds.*

The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

11. Section 105.109(a) is revised to read as follows:

§ 105.109 Exemplary and innovative projects.

(a)(1) The Commissioner makes a contract for an exemplary and innovative project only if the project [illegible]

(2) Section [illegible] of the EDGAR references the regulations that govern the participation of those students.

* * * * *

12. Section 105.204 is revised to read as follows:

§ 105.204 Competitive awards.

The Commissioner makes awards competitively except to the extent that appropriate sections of the Indian Self-Determination and Education Assistance Act of 1975 apply or to the extent that more specific regulations in this subpart apply.

(Sec. 103(a)(1)(B)(iii); 20 U.S.C. 2303; 25 U.S.C. 450e(b))

13. Section 105.206 is amended by revising the first sentence to read as follows:

§ 105.206 [illegible]

[illegible]

14. Section [illegible] is amended by [illegible] paragraphs (b) and (c) and revising paragraph (a) to read as follows:

§ 105.[illegible] Applications for grants or contracts.

(a) An applicant shall give the State board an opportunity to comment on its application.

(b) (Deleted)

* * * * *

(c) (Deleted)

PART 107—FEDERAL FINANCIAL ASSISTANCE FOR PLANNING AND EVALUATION [REVOKED]

15. Part 107 is revoked.

PART 116b—STATE OPERATED PROGRAMS FOR HANDICAPPED CHILDREN

§§ 116b.10, 116b.11 [Revoked]

§§ 116b.13, 116b.23, 116b.32, 116b.60 [Amended]

16. The following sections are revoked: §§ 116b.10; 116b.11; 116b.13(a), (b), and (f); 116b.23(b); 116b.32(b); and 116b.60(a) and (b)(3).

17. Section 116b.2 is revised to read as follows:

§ 116b.2 Regulations that apply to State Operated Programs for Handicapped Children.

(a) *Regulations.* The following [illegible]

[illegible]

(2) The regulations in this Part 116b.

(3) The regulations in 45 CFR Part 116 (general requirements relating to Title I of the Act). However, § 116.40(b) (Use of funds for services that the applicant is required to provide) does not apply.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e-3(a)(1))

PART 116c—GRANTS TO STATE AGENCIES FOR PROGRAMS TO MEET THE SPECIAL EDUCATIONAL NEEDS OF CHILDREN IN INSTITUTIONS FOR NEGLECTED OR DELINQUENT CHILDREN

[illegible]

§ 116c.1 Applicability.

* * * * *

(b) *Regulations that apply to programs for neglected or delinquent children:*

(1) *Regulations.* The following regulations apply to programs for neglected or delinquent children:

(i) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100b (State-Administered Programs) and Part 100c (Definitions).

(ii) 45 CFR Part 116 (general requirements relating to Title I of the Act).

(iii) The regulations in this Part 116c.

(2) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(i) Using regulations that apply to Education Division programs; and

(ii) Applying for assistance under an Education Division program.

* * * * *

PART 121a—ASSISTANCE TO STATES FOR EDUCATION OF HANDICAPPED CHILDREN

§§ [illegible] 121a.593, 121a.601, 121a.602 [Revoked]

§§ 121a.8, 121a.183, 121a.190, 121a.193, 121a.452 [Amended]

20. The following sections are revoked: §§ 121a.8(a); 121a.15; 121a.112; 121a.113; 121a.114; 121a.120; 121a.135; 121a.142; 121a.143; 121a.150; 121a.181; 121a.183(b); 121a.190(a); 121a.191; 121a.193(a) and (b); 121a.229; 121a.232; 121a.233; 121a.234; 121a.236; 121a.239; 121a.386; 121a.452(b); 121a.453; 121a.454; 121a.455; 121a.456; 121a.457; 121a.458; 121a.459; 121a.460; 121a.581; 121a.582; 121a.583; 121a.590; 121a.591; 121a.592; 121a.593; 121a.601; and 121a.602.

21. Section 121a.3 is revised to read as follows:

§ 121a.3 Regulations that apply to Assistance to States for Education of Handicapped Children.

[illegible]

(2) The regulations in this Part 121a.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e-3(a)(1))

Definitions

* * * * *

22. Section 121a.450 is revised to read as follows:

§ 121a.450 Definition of "private school handicapped children."

As used in §§ 121a.451–121a.452, "private school handicapped children" means handicapped children enrolled in private schools or facilities other than handicapped children covered under §§ 121a.400–121a.403.

(20 U.S.C. 1413(a)(4)(A))

23. Section 121a.451 is revised to read as follows:

§ 121a.451 State educational agency [illegible]

The State educational agency shall [illegible]

[illegible] provision is made for the participation of private school handicapped children in the program assisted or carried out under this part by providing them with special education and related services; and

(b) The requirements in 45 CFR 100b.651–100b.663 of EDGAR are met.

(20 U.S.C. 1413(a)(4)(A))

PART 121b—REGIONAL RESOURCE CENTERS

§§ 121b.1, 121b.13 [Amended]

24. The following sections are revoked: §§ 121b.1(b) and 121b.13(a).

25. A new § 121b.5 is added to read as follows:

§ 121b.5 Regulations that apply to the Regional Resource Centers Program.

(a) *Regulations.* The following regulations apply to the Regional Resource Centers Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 121b.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e-3(a)(1))

PART 121c—CENTERS AND SERVICES FOR DEAF-BLIND CHILDREN

§§ 121c.1, 121c.10, 121c.34 [Amended]

26. The following sections are revoked: §§ 121c.1(b); 121c.10 (b) and (c); and 121c.34(b).

27. A new § 121c.4 is added to read as follows:

§ 121c.4 Regulations that apply to the Centers and Services for Deaf-Blind Children Program.

(a) *Regulations.* The following regulations apply to the Centers and Services for Deaf-Blind Children Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 121c.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e-3(a)(1))

PART 121d—EARLY EDUCATION FOR HANDICAPPED CHILDREN

§ 121d.54 [Revoked]

§§ 121d.1, 121d.17, 121d.31, 121d.40, 121d.52 [Amended]

28. The following sections are revoked: §§121d.1(b); 121d.17 (1st sentence only); 121d.31(b); 121d.40(b); 121d.52(a); and 121d.54.

29. A new Subpart D is added to read as follows:

Subpart D—Other Applicable Regulations

Sec.
121.60 Regulations that apply to the Handicapped Children Early Education Program.

§ 121d.60 Regulations that apply to the Handicapped Children Early Education Program.

(a) *Regulations.* The following additional regulations apply to the Handicapped Children Early Education Program under Subparts A, B, and C of this part:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 121d.

(3) For the programs under Subparts B and C only, the regulations in 45 CFR Part 121e.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e-3(a)(1))

PART 121e—AUXILIARY ACTIVITIES

§ 121e.5 [Revoked]

§ 121e.1 [Amended]

30. The following sections are revoked: §§ 121e.1(b) and 121e.5.

A new § 121e.1–1 is added to read as follows:

§ 121e.1-1 Regulations that apply to the Auxiliary Activities Program.

(a) *Regulations.* The following regulations apply to the Auxiliary Activities Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 121e.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1223-3(a)(1))

PART 121f—TRAINING PERSONNEL FOR THE EDUCATION OF THE HANDICAPPED

§§ 121f.1, 121f.5 [Amended]

31. The following sections are revoked: 121f.1(b); 121f.5(d)(1); and 121f.22(b).

32. A new § 121f.6–1 is added to read as follows:

§ 121f.6–1 Regulations that apply to the Training Personnel for the Education of the Handicapped Program.

(a) *Regulations.* The following regulations apply to the Training Personnel for the Education of the Handicapped Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 121f.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e-3(a)(1))

PART 121g—RECRUITMENT OF PERSONNEL AND DISSEMINATION OF INFORMATION

§ 121g.1 [Amended]

33. Section 121g.1(b) is revoked.

34. A new § 121g.5 is added to read as follows:

§ 121g.5 Regulations that apply to the Recruitment of Personnel and Dissemination of Information Program.

(a) *Regulations.* The following regulations apply to the Recruitment of Personnel and Dissemination of Information Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 121g.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e-3(a)(1))

PART 121h—RESEARCH IN EDUCATION OF THE HANDICAPPED

§ 121h.9 [Revoked]

§§ 121h.1, Appendix [Amended]

35. The following sections are revoked: §§ 121h.1(b); 121h.9; and, in the Appendix, §§ 3.1, 3.2(a) (1st and 2nd sentences only) and (b)(3)(i), (ii), (iii), and (iv), (b)(4)(v), and (b)(5).

36. A new § 121h.1-1 is added to read as follows:

§ 121h.1-1 Regulations that apply to the Research in Education of the Handicapped Program.

(a) *Regulations.* The following regulations apply to the Research in Education of the Handicapped Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 121h.

(3) The definitions in 45 CFR Part 121a.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e-3(a)(1))

PART 121i—INSTRUCTIONAL MEDIA FOR THE HANDICAPPED

§§ 121i.89, 121i.90, 121i.119, 121i.120 [Revoked]

§ 121i.1 [Amended]

37. The following sections are revoked: §§ 121i.1(b); 121i.89; 121i.90; 121i.119; and 121i.120.

38. A new § 121i.7 is added to read as follows:

§ 121i.7 Regulations that apply to the Instructional Media for the Handicapped Program.

(a) *Regulations.* The following regulations apply to the Instructional Media for the Handicapped Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 121i.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e-3(a)(1))

PART 121k—REGIONAL EDUCATION PROGRAMS FOR HANDICAPPED PERSONS

§§ 121k.1, 121k.19 [Amended]

39. The following sections are revoked: 121k.1(b) and 121k.19(c).

40. A new § 121k.5 is added to read as follows:

§ 121k.5 Regulations that apply to Regional Education Programs for Handicapped Persons.

(a) *Regulations.* The following regulations apply to Regional Education Programs for Handicapped Persons:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 121k.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e-3(a)(1))

41. Section 121k.15 is amended by revising the introductory text and deleting paragraphs (f) and (g) as follows:

§ 121k.15 Application requirements.

Applications for funds under this part must contain the following information:

* * * * *

(f) (Deleted)

(g) (Deleted)

42. Section 121k.16 is amended by revising paragraph (f) to read as follows:

§ 121k.16 Initial year application.

* * * * *

(f) A description of how the requirement under 45 CFR 100a.580 of EDGAR (Coordination with other activities) will be met.

* * * * *

PART 121m—INCENTIVE GRANTS

§§ 121m.9, 121m.10 [Revoked]

43. The following sections are revoked: §§ 121m.9 and 121m.10.

44. Section 121m.2 is revised to read as follows:

§ 121m.2 Regulations that apply to the Incentive Grants Program.

(a) *Regulations.* The following regulations apply to the Incentive Grants Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100b (State-Administered Programs) and Part 100c (Definitions).

(2) The regulations in this Part 121m.

(3) The definitions in Part 121a.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e-3(a)(1))

PART 130—LIBRARY SERVICES, PUBLIC LIBRARY CONSTRUCTION, AND INTERLIBRARY COOPERATION

§§ 130.30, 130.41 [Revoked]

§§ 130.3, 130.16, 130.32 [Amended]

45. The following text in Part 130 is revoked: The terms "Commissioner" and "State" in §§ 130.3, 130.16(b)(2); 130.30; 130.32(b); and 130.41.

46. Section 130.2 is revised to read as follows:

Part 130.2 Regulations that apply to the Library Services and Construction Program.

(a) *Regulations.* The following regulations apply to the Library Services and Construction Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100b (State-Administered Programs) and Part 100c (Definitions).

(2) The regulations in this Part 130.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e-3(a)(1))

PART 131—COLLEGE LIBRARY RESOURCES PROGRAM

§ 131.4 [Amended]

47. Paragraphs (a) and (b) or § 131.4 are revoked.

48. Section 131.5 is revised to read as follows:

§ 131.5 Regulations that apply to the College Library Resources Program.

(a) *Regulations.* The following regulations apply to the College Library Resources Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 131.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

PART 132—GRANTS FOR TRAINING IN LIBRARIANSHIP

§§ 132.21, 132.37 [Revoked]

49. The following sections are revoked: §§ 132.21 and 132.37.

50. A new § 132.1–1 is added to read as follows:

§ 132.1–1 Regulations that apply to the Training in Librarianship Program.

(a) *Regulations.* The following regulations apply to the Training in Librarianship Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 132.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

PART 133—LIBRARY RESEARCH AND DEMONSTRATION

§§ 133.6, 133.9 [Revoked]

51. The following sections are revoked: §§ 133.6 and 133.9.

52. Section 133.4 is revised to read as follows:

§ 133.4 Regulations that apply to the Library Research and Demonstration Program.

(a) *Regulations.* The following regulations apply to the Library Research and Demonstration Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 133.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

PART 136—STRENGTHENING RESEARCH LIBRARY RESOURCES

§ 136.10 [Revoked]

§§ 136.01, 136.03, 136.05, 136.06 [Amended]

53. The following text is revoked: § 136.01(b); the definitions of "Past fiscal year" and "State" in §§ 136.03; 136.05(a)(2), (a)(4), (b), (c), and (d); § 136.06(b) and (c); and § 136.10.

54. A new § 136.02–1 is added to read as follows:

§ 136.02–1 Regulations that apply to the Strengthening Research Library Resources Program.

(a) *Regulations.* The following regulations apply to the Strengthening Research Library Resources Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 136.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

PART 137—EDUCATIONAL INFORMATION CENTERS PROGRAM

§§ 137.7, 137.8 [Revoked]

§§ 137.1, 137.2 [Amended]

55. The following text is revoked: § 137.1(b); the definition of "State" in §§ 137.2; 137.7; and 137.8.

56. A new § 137.2–1 is added to read as follows:

§ 137.2–1 Regulations that apply to the Educational Information Centers Program.

(a) *Regulations.* The following regulations apply to the Educational Information Centers Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100b (State-Administered Programs) and Part 100c (Definitions).

(2) The regulations in this Part 137.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

57. Section 137.5 is amended to add a new paragraph (c) as follows:

§ 137.5 State plan requirements—initial year.

* * * * *

(c) A State plan remains in effect for the duration of the Education Information Centers authorization.

58. Section 137.6 is amended by revising the introductory text to paragraph (a), by revising (a)(5), (a)(6), and (c) and by deleting paragraphs (a)(1) and (b) as follows:

§ 137.6 Annual applications.

(a) If a State has a State plan in effect, the State may apply to the Commissioner for its allocation of funds for the second and each succeeding year of its participation in the program. The application must include the following information:

(1) (Deleted)

* * * * *

(5) The location of each Center currently operating and any changes in the location of a Center from the previous year;

(6) The program activities and services being provided through each Center and any changes in those activities and services from the previous year;

* * * * *

(b) (Deleted)

(c) A State that, for its initial year, submitted a plan to plan for the development of items required by 45 CFR 136.5(a) (4), (5), (7), (8), and (9) shall submit those completed items with its first application.

(20 U.S.C. 1070d–3)

59. Paragraph (b) of § 137.9 is revised to read as follows:

§ 137.9 Allowable costs—matching requirement.

* * * * *

(b) The State shall provide 33⅓ percent of those costs.

(20 U.S.C. 1070d–2)

PART 146—MODERN FOREIGN LANGUAGE AND AREA STUDIES

§§ 146.15, 146.17, 146.25, 146.27, 146.53 [Revoked]

§§ 146.16, 146.26 [Amended]

60. The following sections are revoked: §§ 146.15; 146.16(a); 146.17; 146.25; 146.26(a); 146.27; and 146.53.

61. Section 146.3 is revised to read as follows:

§ 146.3 Regulations that apply to the Modern Foreign Language and Area Studies Program.

(a) *Regulations.* The following regulations apply to the Modern Foreign Language and Area Studies Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions). (Note: Part 100a does not apply to the Fellowship Program under Subpart D.)

(2) The regulations in this Part 146.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

PART 146a—CITIZEN EDUCATION FOR CULTURAL UNDERSTANDING PROGRAM

§§ 146a.1, 146a.4, 146a.5 [Amended]

62. The following text is revoked: §§ 146a.1(b); 146a.4(b)(2); and 146a.5(a).

63. A new § 146a.2–1 is added to read as follows:

§ 146a.2-1 Regulations that apply to the Citizen Education for Cultural Understanding Program.

(a) *Regulations.* The following regulations apply to the Citizen Education for Cultural Understanding Program.

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 146a.

(b) *How to use regulations; how to apply for funds.*
The "Introduction to Regulations of the Education Division at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

64. Paragraph (b) of § 146a.6 is revised to read as follows:

§ 146a.6 Project requirements.

* * * * *

(b) Permissible costs include library acquisition of materials appropriate to the program, the use of computer hardware, and the acquisition or development of computer software.

* * * * *

PART 148—HIGHER EDUCATION PROGRAMS IN MODERN FOREIGN LANGUAGE TRAINING AND AREA STUDIES

§§ 148.1, 148.2, 148.37, 148.51, 148.55, Appendix [Amended]

65. The following text is revoked: § 148.1(b); the definitions of "Local school system," "State," and "State department of education" in §§ 148.2; 148.37(2); 148.51 (a) and (b); 148.55(a); and, in the Appendix, §§ 8.1, 11.1, 12.1, and 12.2.

66. A new § 148.5 is added to read as follows:

§ 148.5 Regulations that apply to this program.

(a) *Regulations.* The following regulations apply to the Higher Education Programs in Modern Foreign Language Training and Area Studies:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 148.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

67. Paragraph (a) of § 148.12 is revised to read as follows:

§ 148.12 Applications.

(a) Each fiscal year eligible institutions may recommend graduate students for fellowships under this subpart and forward to the Commissioner applications for those students. Each application must include information as to the student's personal and academic background and proposed research project. In addition to the application, each student shall arrange with appropriate persons to have three reference forms (Form OE 7628–3) and one language reference form (Form 7628–1) submitted through his or her eligible institution to the Commissioner on his or her behalf.

* * * * *

68. Paragraph (a) of § 148.22 is revised to read as follows:

§ 148.22 Applications.

(a) Each fiscal year eligible institutions may recommend to the Commissioner faculty members for assistance under this subpart and forward to the Commissioner applications from those faculty members. Each application must include information as to the faculty member's personal academic background and proposed research project.

* * * * *

69. Section 148.32 is amended by revising paragraph (a), the introduction sentence to paragraph (b), by revising (b)(2) and by deleting paragraph (d), to read as follows:

§ 148.32 Applications.

(a) Each fiscal year eligible institutions may forward proposals to the Commissioner for assistance under this subpart.

(b) An "eligible institution" for the purpose of this subpart means—

* * * * *

(2) A State educational agency;

* * * * *

(d) (Deleted)

70. Section 148.36 is amended by revising the introductory text to paragraph (b) to read as follows:

§ 148.36 Award provisions.

* * * * *

(b) Grant funds under this subpart may only be used for the following:

* * * * *

71. Section 148.42 is amended by revising the introductory text to paragraph (b), by revising (b) (2) and (3) and by deleting paragraph (d) as follows:

§ 148.42 Applications.

* * * * *

(b) An "eligible institution" for the purpose of this subpart means—

* * * * *

(2) A State educational agency;

(3) A local educational agency;

* * * * *

(d) (Deleted)

72. Paragraph (a) of § 148.46 is amended by revising the introductory text to read as follows:

§ 148.46 Award provisions.

(a) Grant funds under this part may be used only for the following:

* * * * *

PART 149—COMMISSIONER'S RECOGNITION PROCEDURES FOR NATIONAL ACCREDITING BODIES AND STATE AGENCIES

§ 149.2 [Amended]

73. Section 149.2 is amended by revoking the definition of "States."

PART 154—EDUCATIONAL OPPORTUNITY CENTERS

74. The following text in Part 154 is revoked: § 154.1(b); the definition of "State" in §§ 154.2; 154.3(a)(2); and 154.11(c).

75. A new § 154.1-1 is added to read as follows:

§ 154.1-1 Regulations that apply to the Educational Opportunity Centers Program.

(a) *Regulations.* The following regulations apply to the Educational Opportunity Centers Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 154.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e-3(a)(1))

76. Section 154.5 is amended by revising the introductory text to paragraph (a) and (b) and deleting paragraphs (a)(3)-(6), (b) and (c) as follows:

§ 154.5 Applications.

(a) Applications must include the following:

* * * * *

(3) (Deleted)

(4) (Deleted)

(5) (Deleted)

(6) (Deleted)

* * * * *

(b) (Deleted)

(c) (Deleted)

PART 155—UPWARD BOUND PROGRAM

§ 155.12 [Revoked]

§§ 155.1, 155.2, 155.6 [Amended]

77. The following text is revoked: §§ 155.1(b); 155.2(f); 155.6(b); and 155.12.

78. A new § 155.1-1 is added to read as follows:

§ 155.1-1 Regulations that apply to the Upward Bound Program.

(a) *Regulations.* The following regulations apply to the Upward Bound Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 155.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e-3(a)(1))

79. Section 155.5 is amended by revising paragraph (e)(3) and by deleting paragraph (e)(4) as follows:

§ 155.5 Summer residential, academic year, and veterans components.

* * * * *

(e) * * *

(3) Engage a full-time project director.

(4) (Deleted)

* * * * *

80. Paragraph (a) of § 155.7 is amended by deleting paragraphs (a)(2)(iv), (a)(3)(iii) and (iv), (a)(4) and (b) as follows:

§ 155.7 Applications.

(a) * * *

(2) * * *

(iv) (Deleted)

(3) * * *

(iii) (Deleted)

(iv) (Deleted)

(4) (Deleted)

(b) (Deleted)

* * * * *

81. Section 155.9 is amended by revising paragraph (a)(3) and by revoking paragraphs (a)(4) and (5), to read as follows:

§ 155.9 Program requirements.

(a) * * *

(3) Engage a full-time project director;

(4) (Deleted)

(5) (Deleted)

* * * * *

82. Section 155.11 is amended by revising the introductory text to paragraph (a) and by deleting paragraphs (b)(1) and (c), as follows:

§ 155.11 Allowable costs-stipends.

(a) Allowable project costs may include:

* * * * *

(b) * * *

(1) (Deleted)

* * * * *

(c) (Deleted)

* * * * *

83. Section 155.14 is amended by revising the introductory text to read as follows:

§ 155.14 Travel.

The following travel is authorized:

* * * * *

84. Section 155.15 is amended by revising the introductory text to read as follows:

§ 155.15 Coordination of administration with other programs authorized by Title IV-A-4 of the Act.

In addition to the requirements in 45 CFR 100a.580 and 155.9, if an aplicant also requests funds to carry out one or more of the programs authorized by Title IV-A-4 of the Act, the application must reflect the following:

* * * * *

PART 156—ASSISTANCE TO STATES FOR STATE EQUALIZATION PLANS [REVOKED]

85. Part 156 is revoked.

PART 157—SPECIAL SERVICES FOR DISADVANTAGED STUDENTS PROGRAM

§ 157.12 [Revoked]

§§ 157.1, 157.2, 157.4 [Amended]

86. The following text is revoked: §§ 157.1(b); 157.2(m); 157.4(b) and (c); and 157.12.

87. A new § 157.1-1 is added to read as follows:

§ 157.1-1 Regulations that apply to the Special Services for Disadvantaged Students Program.

(a) *Regulations.* The following regulations apply to the Special Services for Disadvantaged Students Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 157.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e-3(a)(1))

88. Section 157.5 is amended by revising the introductory text of paragraph (a), by revising paragraph (a)(3)(v), and by deleting paragraphs

(a)(2)(iii), (a)(3)(i), (a)(3)(vii), (a)(4) and (b) as follows:

§ 157.5 Applications.

(a) An application must contain the following information:

* * * * *

(2) * * *

(iii) (Deleted)

(3) * * *

(i) (Deleted)

* * * * *

(v) A description of the manner in which the applicant will orient the faculty and staff of the institution to the goals and objectives of the Special Services program;

* * * * *

(vii) (Deleted)

(4) (Deleted)

(b) (Deleted)

* * * * *

89. Section 157.7 is amended by revoking paragraphs (a)(5) and (b)(7), and by revising paragraph (b)(6), to read as follows:

§ 157.7 Program requirements.

(a) * * *

(5) (Deleted)

* * * * *

(b) * * *

(6) Engage a full-time project director;

(7) (Deleted)

* * * * *

90. Section 157.11 is amended by revising the introductory text to paragraph (a) and deleting paragraphs (b)(2) and (c), to read as follows:

§ 157.11 Allowable costs.

(a) Allowable project costs may include the following:

* * * * *

(2) (Deleted)

* * * * *

(c) (Deleted)

91. Section 157.14 is amended by revising the introductory text, to read as follows:

§ 157.14 Travel.

The folllowing travel is authorized:

* * * * *

92. Section 157.15 is amended by revising the introductory text, to read as follows:

§ 157.15 Coordination of administration with other programs authorized by Title IV-A-4 of the Act.

In addition to the requirements in 45 CFR 100a.580 and 157.7, if an applicant under this part also requests funds to carry out one or more of the programs authorized by Title IV-A-4 of the Act, the application must reflect the following:

* * * * *

PART 158—FOLLOW THROUGH PROGRAM

§§ 158.29, 158.30, 158.43, 158.64, 158.66, 158.85 [Revoked]

§§ 158.2, 158.12, 158.13, 158.24 [Amended]

93. The following text is revoked: The definitions of "Local educational agency," "State," and "State educational agency" in § 158.2; §§ 158.12(d); 158.13(b); 158.24(a); 158.29; 158.30; 158.43; 158.64 (the last sentence only); 158.66; and 158.85.

94. A new § 158.4 is added to read as follows:

§ 158.4 Regulations that apply to the Follow Through Program.

(a) *Regulations.* The following regulations apply to the Follow Through Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 158.

(b) *Exceptions to EDGAR.* An applicant for a continuation award under the Follow Through Program shall submit, in addition to the information required by EDGAR 45 CFR 100a.118, information that addresses each selection criterion that applies to the program.

(c) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e-3(a)(1))

95. Section 158.24 is amended by revising the introductory text to paragraph (b) and deleting paragraph (a) as follows:

§ 158.24 Evaluation of program effectiveness.

(a) (Deleted)

(b) *Standards for evaluation.* In evaluating the effectiveness of the Follow Through Program, the Commissioner uses standards such as the following:

* * * * *

96. Section 158.84 is revised to read as follows:

§ 158.84 Suspension; refusal to refund.

(a) The Commissioner only suspends assistance under this program in an emergency. An emergency exists if there is evidence of flagrant misuse of funds by a recipient, or evidence of unauthorized activity by the recipient that poses a threat of harm to children participating in the program. (See 45 CFR Part 100e for the procedures of the Education Appeal Board.)

(b) The Commissioner does not deny applications for refunding under this part unless the applicant has been given reasonable notice and opportunity to show cause why this action should not be taken.

PART 159—TALENT SEARCH PROGRAM

§ 159.12 [Revoked]

§§ 159.1, 159.2, 159.5 [Amended]

97. The following text is revoked; §§ 159.1(b); 159.2(j); 159.5(b); and 159.12.

98. A new § 159.1-1 is added to read as follows:

§ 159.1-1 Regulations that apply to the Talent Search Program.

(a) *Regulations.* The following regulations apply to the Talent Search Program—

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 159.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e-3(a)(1))

99. Section 159.6 is amended by revising the introductory text to paragraph (a) and by revoking paragraphs (a)(2)(iii), (a)(3) (iii) and (iv), (a)(4), and (b), to read as follows:

§ 159.6 Applications.

(a) An application under this part must provide the following information:

* * * * *

(2) * * *

(iii) (Deleted)

(3) * * *

(iii) (Deleted)

(iv) (Deleted)

(4) (Deleted)

(b) (Deleted)

* * * * *

100. Section 159.9 is amended by revising paragraph (b)(6) and by revoking paragraphs (b) (7) and (8), to read as follows:

§ 159.9 Project activities and services-project requirements.

* * * * *

(b) * * *

(6) Engage a full-time project director.

(7) (Deleted)

(8) (Deleted)

* * * * *

101. Section 159.11 is amended by revising the introductory text to paragraph (a) and by revoking paragraphs (b)(5) and (c), to read of follows:

§ 159.11 Allowable costs.

(a) Allowable project costs may include:

* * * * *

(b) * * *

(5) (Deleted)

* * * * *

(c) (Deleted)

102. Section 159.14 is amended by revising the introductory text as follows:

§ 159.14 Travel.

The following travel is authorized:

* * * * *

103. Section 159.15 is amended by revising the introductory text, to read as follows:

§ 159.15 Coordination of administration with other programs authorized by Title IV-A-4 of the Act.

In addition to the requirements in 45 CFR 100a.580 and § 159.9, if an applicant under this part requests funds to carry out one or more of the programs authorized by Title IV-A-4 of the Act, the application must reflect the following:

* * * * *

PART 160d—CAREER EDUCATION PROGRAM [REVOKED]

104. Part 160d is revoked.

PART 161—CAREER EDUCATION, STATE ALLOTMENT PROGRAM

105. Section 161.3 is amended by revising the term "State," to read as follows:

§ 161.3 Definitions.

* * * * *

"State" means any one of the 50 States of the United States, the District of Columbia, or the Commonwealth of Puerto Rico. The definition of "State" in 45 CFR Part 100c of EDGAR does not apply to this program.

106. Section 161.4 is revised to read as follows:

§ 161.4 Regulations that apply to the State Allotment Program.

(a) *Regulations.* The following regulations apply to the State Allotment Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 161.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 2301 *et seq.*)

§ 161.41 [Amended]

107. Section 161.41 is amended by deleting "§ 100b.633" and substituting in its place "§ 100b.662."

PART 161a—CAREER EDUCATION, DISCRETIONARY PROGRAMS

§ 161a.3 [Amended]

108. Section 161a.3(b) is revoked.

PART 164—CAPACITY-BUILDING FOR STATISTICAL ACTIVITIES IN STATE AGENCIES

109. The title of Part 164 is revised to read as above.

§§ 164.06, 164.08, 164.09 [Revoked]

§§164.01, 164.05, 164.07 [Amended]

110. The following text of Part 164 is revoked: §§ 164.01(b); 164.05(a) and (c); 164.06; 164.07(b) (last sentence only) and (d); 164.08; 164.09.

111. A new § 164.01-1 is added to read as follows:

§ 164.01-1 Regulations that apply to this program.

(a) *Regulations.* The following regulations apply to the Capacity-Building Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions);

(2) The regulations in this Part 164.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e-3(a)(1))

112. Section 164.02 is revised to read as follows:

§ 164.02 Purpose of the Capacity-Building Program.

The purpose of this program is to build the statistical capabilities of State agencies by facilitating improvements or automation in their statistical systems.

113. Section 164.03 is amended by revising the introductory text and by deleting the definitions of "State" and "State educational agency" and by adding a definition of "State agency," as follows:

§ 164.03 Definitions.

The following definitions apply to terms used in these regulations:

* * * * *

"State" (Deleted)

"State agency" means—

(a) A State educational agency;

(b) A State agency listed in the appendix to these regulations with statewide responsibility for postsecondary education or, if there is no agency for that purpose, an officer or agency designated by the Governor or by State law; or

(c) The State board or agency designated or established as the sole State agency responsible for the administration, or for the supervision of the administration, of programs authorized by Part A, Title I of the Vocational Education Act of 1963, as amended by Pub. L. 94-482.

"State educational agency" (Deleted)

* * * * *

§§ 164.04, 164.05, and 164.07 [Amended]

114. The following sections are amended by deleting the term "State educational agency" and by inserting instead of that term, the term "State agency": §§ 164.04(a); 164.05(b); and 164.07(a), (b) and (c).

PART 168—GENERAL PROVISIONS RELATING TO STUDENT ASSISTANCE PROGRAMS

§ 168.72 [Amended]

115. Section 168.72 is amended by revoking the definition of "Commissioner."

PART 169—STRENGTHENING DEVELOPING INSTITUTIONS PROGRAM

§§ 169.2, 169.22, 169.51, 169.54 [Amended]

116. The following text is revoked: the definitions of "Applicant," "Commissioner," "Public," and "State" in §§ 169.2; 169.22(b)(2) (ii) and (iii); 169.51 (2d sentence only); and 169.54(c).

117. Section 169.5 is revised to read as follows:

§ 169.5 Regulations that apply to the Strenthening Developing Institutions Program.

(a) *Regulations.* The following regulations apply to the Strengthening Developing Institutions Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions)

(2) The regulations in this Part 169.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

118. Section 169.32 is amended by revoking the introductory text in paragraph (b), by revoking paragraph (b)(3), and by redesignating paragraph (b) (1) and (2) as paragraphs (b) and (c), as follows:

§ 169.32 Allowable costs.

* * * * *

(b) The grantee may not charge indirect costs to the grant.

(c) The purchase of equipment is limited to equipment that is necessary to achieve program objectives.

(20 U.S.C. 1054)

119. Section 169.41 is amended by deleting paragraph (a) and revising paragraph (b) to read as follows:

§ 169.41 Submission of applications.

(a) (Deleted)

(b) An applicant shall include in its application a long-range plan in as much detail as is necessary for the Commissioner to judge proposed activities, appropriate length of funding, and resources needed. An application submitted for funds appropriated for any fiscal year after fiscal year 1979 must specifically include in the long-range plan—

(1) Long- and short-range goals;

(2) Planned activities;

(3) Criteria for measuring progress;

(4) Time schedules;

(5) Resources needed; and

(6) Procedures to be used to monitor progress of the proposed Title III activities against the plan. However, an applicant need not submit a long-range plan if the applicant is seeking funding for planning activities only.

(20 U.S.C. 1051, 1054)

PART 172—TEACHER CORPS

§§ 172.110, 172.127, 172.128, 172.134, 172.136, 172.137 [Revoked]

§§ 172.3, 172.112, 172.132, 172.135 [Amended]

120. The following text is revoked: § 172.1(b); the definitions of "Local educational agency," "State," and "State educational agency" in §§ 172.3; 172.110; 172.112(b); 172.127; 172.128; 172.132 (e) and (f); 172.134; 172.135(b); 172.136; and 172.137.

121. A new § 172.4 is added to read as follows:

§ 172.4 Regulations that apply to the Teacher Corps Program.

(a) *Regulations.* The following regulations apply to the Teacher Corps Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 172.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

122. Section 172.30 is amended by revising paragraph (a) to read as follows:

§ 172.30 Project duration.

(a) Each application may be for up to a five-year project period.

* * * * *

PART 173—COMMUNITY SERVICE AND CONTINUING EDUCATION PROGRAMS

§§ 173.2, 173.14, 173.15, 173.16, 173.17, 173.18 173.19, 173.46 [Revoked]

§§ 173.13, 173.21 [Amended]

123. The following text is revoked: §§ 173.2; 173.13(a), (b), (d), and (e); 173.14; 173.15; 173.16; 173.17; 173.18; 173.19; 173.21(a)(2) and (b); and 173.46.

124. A new § 173.9 is added to subpart B, to read as follows:

§ 173.9 Regulations that apply to the State grant program.

(a) *Regulations.* The following regulations apply to the State grant program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100b (State-Administered Programs) and Part 100c (Definitions).

(2) The regulations in this Subpart B.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

125. A new § 173.39 is added to Subpart C, to read as follows:

§ 173.39 Regulations that apply to special programs and projects.

(a) *Regulations.* The following regulations apply to special programs and projects:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Subpart C.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

126. Section 173.44 is revised as follows:

§ 173.44 Application requirements

An application must state—

(a) The applicant's share of the total project cost, which may not be less than 10 percent; and

(b) Assurances that the designated State agency that administers the State grant program under Title I–A has had an opportunity to review and comment on the proposed application.

(20 U.S.C. 1005a(b); S. Rept. No. 92–346 at 10 (1971))

PART 174—NATIONAL DIRECT STUDENT LOAN PROGRAM

§ 174.2 [Amended]

127. Section 174.2 is amended by revoking the following definitions: "Commissioner," "Nonprofit institution," and "State."

PART 175—COLLEGE WORK-STUDY AND JOB LOCATION AND DEVELOPMENT PROGRAM

§ 175.2 [Amended]

128. Section 175.2 is amended by revoking the definitions of "Commissioner," "Nonprofit institutions," and "State."

PART 176—SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

§ 176.2 [Amended]

129. Section 176.2 is amended by revoking the definitions of "Commissioner," "Nonprofit institutions," and "State."

PART 177—FEDERAL, STATE, AND PRIVATE PROGRAMS OF LOW-INTEREST LOANS TO VOCATIONAL STUDENTS AND STUDENTS IN INSTITUTIONS OF HIGHER EDUCATION

§ 177.1 [Amended]

130. Section 177.1 is amended by revoking paragraph (q).

PART 178—STUDENT CONSUMER INFORMATION SERVICES

§ 178.7 [Amended]

131. Section 178.7 is amended by revoking paragraph(a).

PART 178a—INCENTIVE GRANTS FOR STATE STUDENT FINANCIAL ASSISTANCE TRAINING PROGRAM

§§ 178a.7, 178a.10 [Revoked]

§§ 178a.1, 178a.2 [Amended]

132. The following text is revoked: § 178a.1(b); the definition of "State" in §§ 178a.2; 178a.7; and 178a.10.

133. A new § 178a.1–1 is added to read as follows:

§ 178a.1–1 Regulations that apply to the Incentive Grants for State Student Financial Assistance Training Program.

(a) *Regulations.* The following regulations apply to the Incentive Grants for State Student Financial Assistance Training Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100b (State-Administered Programs) and Part 100c (Definitions).

(2) The regulations in this Part 178a.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

PART 179—GRADUATE AND PROFESSIONAL STUDY FELLOWSHIPS AND INSTITUTIONAL GRANTS

§§ 179.27, 179.28 [Revoked]

§§ 179.3, 179.4, 179.23, 179.25 [Amended]

134. The following text is revoked: §§ 179.3(i); 179.4(c); 179.23(c); 179.25 (c) and (d); 179.27; and 179.28.

135. A new § 179.20 is added to Subpart B, to read as follows:

§ 179.20 Regulations that apply to the Institutional Grants Program.

(a) *Regulations.* The following regulations apply to the Institutional Grants Programs:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Subpart B.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

136. Section 179.53 is amended by revising paragraph (a) to read as follows:

§ 179.53 Records and reports.

(a) Each institution of higher education that receives an allocation of fellowships under this part shall make the reports that are required by 45 CFR 74.82

* * * * *

PART 180—DESEGREGATION OF PUBLIC EDUCATION

§§ 180.03, 180.16, 180.34, 180.54, 180.63 [Revoked]

§§ 180.20, 180.57, 180.65, 180.73 [Amended]

137. The following text is revoked: the definition of "State educational agency" in §§ 180.03; 180.16; 180.20(c); 180.34; 180.54; 180.57(b); 180.63; 180.65(b); and 180.73(b) (3), (5), and (6).

138. Section 180.01 is revised to read as follows:

§ 180.01 Purpose.

The purpose of awards under this part is to help solve problems related to the race, sex, and national origin desegregation of public elementary and secondary schools.

(42 U.S.C. 2000c–2000c–5)

139. Section 180.02 is revised to read as follows:

§ 180.02 Regulations that apply to the Desegregation of Public Education program.

(a) The regulations in this Part 180 govern grants under the Desegregation of Public Education program.

(b) Awards under this program are subject to the Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(c) 45 CFR 100a.219(a) and 100a.220, relating to the selection of certain projects for funding without competition do not apply to any award under this program.

(d) The following provisions of EDGAR do not apply to Race, Sex, and National Origin Desegregation Assistance Centers under Subpart C:

(1) 45 CFR 100a.250(a), 100a.253 (a), (b) and (d), and 100a.254(a), relating to approval of continuation awards.

(2) Section 100a.232(b) and 100a.233, relating to the amount of a grant.

(e) The provisions of 45 CFR 100a.217 and 100a.219(c) of EDGAR, relating to the selection of projects, do not apply to Special Grants to School Boards for Race and National Origin Desegregation under Subpart F.

(20 U.S.C. 1221e–3(a)(1); 42 U.S.C. 2000c–2000c–5)

PART 182—COOPERATIVE EDUCATION PROGRAMS

§§ 182.5, 182.6, 182.13, 182.34 [Revoked]

§§ 182.18, 182.19 [Amended]

140. The following text is revoked: §§ 182.5; 182.6; 182.13; 182.18(a)(3) and (b); 182.19 (a), (c), (d), and (e); and 182.34.

141. Section 182.4 is revised to read as follows:

§ 182.4 Regulations that apply to the Cooperative Education Programs.

(a) *Regulations.* The following regulations apply to the Cooperative Education Programs:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 182.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e-3(a)(1))

PART 182a—NATIONAL ALCOHOL AND DRUG ABUSE PREVENTION PROGRAM

§§ 182a.1, 182a.2, 182a.13, 182a.13, 182a.23, 182a.24 [Amended]

142. The following text is revoked: §§ 182a.1(d); 182a.2 (e) and (f); 182a.13 (a) and (c)(2) and (3); 182a.23(a); and 182a.24(b).

143. A new § 182a.1-1 is added to read as follows:

§ 182a.1-1 Regulations that apply to the National Alcohol and Drug Abuse Prevention Program.

(a) *Regulations.* The following regulations apply to the National Alcohol and Drug Abuse Prevention Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 182a.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e-3(a)(1))

144. Section 182a.13 is amended by revising paragraph (d) to read as follows:

§ 182a.13 Application requirements.

* * * * *

(d) An applicant local educational agency shall give its State educational agency an opportunity to comment on its application.

(21 U.S.C. 1002)

145. Section 182a.24 is amended by revising the introductory text to paragraph (a) to read as follows:

§ 182a.24 Application requirements.

(a) An application must contain the following information:

* * * * *

PART 189—VETERANS' COST-OF-INSTRUCTION PAYMENTS TO INSTITUTIONS OF HIGHER EDUCATION

§§ 189.4, 189.31, 189.32, 189.33, 189.34, 189.35 [Revoked]

§§ 189.1, 189.21 [Amended]

146. The following text is revoked: the definition of "State" in §§ 189.1; 189.4; 189.21(a); 189.31; 189.32; 189.33; 189.34; and 189.35.

147. A new § 189.1-1 is added to read as follows:

§ 189.1-1 Regulations that apply to the Veterans' Cost-of-Instruction Payments to Institutions of Higher Education Program.

(a) *Regulations.* The following regulations apply to the Veterans' Cost-of-Instruction Payments to Institutions of Higher Education Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 189.

(b) The selection criteria in EDGAR, 45 CFR 100a.202-100a.206, do not apply to this program.

(c) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e-3(a)(1))

148. Section 189.21 is amended by revising the introductory text to paragraph (b) and by deleting paragraph (b)(3) as follows:

§ 189.21 Submission of application by individual institutions.

* * * * *

(b) An application must contain the following:

* * * * *

(3) (Deleted)

* * * * *

149. Section 189.22 is revised to read as follows:

§ 189.22 Submission of applications by parties to consortium agreements.

Each institution proposing to carry out the activities required under this part through a consortium agreement, under § 189.15, shall provide all information and assurances required under § 189.21, as well as information and assurances necessary to a finding by the Commissioner that the conditions for a consortium agreement in § 189.15 have been met.

(20 U.S.C. 107[illegible]-1)

PART 190—BASIC EDUCATIONAL OPPORTUNITY GRANT PROGRAM

§ 190.2 [Amended]

150. The following definitions in § 190.2 are revoked: "Commissioner," "Nonprofit institution," and "State."

PART 191—GUIDANCE AND COUNSELING

§§ 191.34, 191.36, 191.46, 191.47, 191.48 [Revoked]

§§ 191.12, 191.25, 191.35 [Amended]

151. The following text is revoked: §§ 191.12(c), (f), (g), (h), (i), (j), and (m); 191.25(b); 191.34; 191.35(a); 191.36; 191.46; 191.47; and 191.48.

152. Section 191.10 is revised to read as follows:

§ 191.10 Regulations that apply to the Guidance and Counseling Program.

(a) *Regulations.* The following regulations apply to the Guidance and Counseling Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 191.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e-3(a)(1))

153. Section 191.31 is amended by revising the introductory text and paragraph (a), (c)(1)(i), and (iii) and by deleting (b), (c)(1)(ii), (v)-(x) and (c)(3) as follows:

§ 191.31 Content of application.

An application must include—

(a) Identification of the purpose and the type of activity—such as training or improved supervisory services—to which the application is addressed;

(b) [Deleted]

(c)(1)(i) A description of the needs of prospective participants for the project, in relation to the needs of students served by these participants, and a description of how the needs were determined;

(ii) [Deleted]

(iii) Information on the size, scope, and duration of the proposed project;

* * * * *

(v) [Deleted]

(vi) [Deleted]

(vii) [Deleted]

(viii) [Deleted]

(ix) [Deleted]

(x) [Deleted]

* * * * *

(3) [Deleted]

154. Section 191.32 is revised to read as follows:

§ 191.32 State review of application.

Each applicant under this subpart must give an opportunity to comment on its application to the State educational agency of each State in which is located the agency or organization to be served under a project for improving supervisory services or in which the prospective trainees are employed, as applicable.

(20 U.S.C. 2533(a)(3), 2534(a))

155. Section 191.44 is amended by revising the introductory text, paragraph (b)(1)(i) and by deleting paragraphs (a), (b)(1)(ii)–(iii), (v)–(ix) and (b)(2) as follows:

§ 191.44 Required application data.

An application must include—

(a) [Deleted]

(b)(1)(i) A description of the needs to be met by the proposed plan; e.g., the need to reduce duplication of efforts in guidance and counseling in the State;

(ii) [Deleted]

(iii) [Deleted]

(iv) * * *

(v) [Deleted]

(vi) [Deleted]

(vii) [Deleted]

(viii) [Deleted]

(ix) [Deleted]

(2) [Deleted]

PART 192—STATE STUDENT INCENTIVE GRANT PROGRAM

§§ 192.11, 192.12 [Revoked]

§§ 192.2, 192.3, 192.10 [Amended]

156. The following text is revoked: the definitions of "Nonprofit" and "State" in §§ 192.2; 192.3(b), (c), (g), and (i); 192.10(b); 192.11; and 192.12.

157. A new § 192.1–1 is added to read as follows:

§ 192.1–1 Regulations that apply to the State Student Incentive Grant Program.

(a) *Regulations.* The following regulations apply to the State Student Incentive Grant Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100b (State-Administered Programs) and Part 100c (Definitions).

(2) The regulations in this Part 192.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

PART 194—PUBLIC SERVICE EDUCATION PROGRAM

§§ 194.1, 194.5, 194.7 [Amended]

158. The following text is revoked: [illegible] 194.5(a) and (c); and 194.7(c) and (d).

159. Section 194.2 is revised to read as follows:

§ 194.2 Regulations that apply to the Public Service Institutional Grants Program.

(a) *Regulations.* The following regulations apply to the Public Service Institutional Grants Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Subpart A.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

160. A new § 194.20 is added to Subpart B, to read as follows:

§ 194.20 Regulations that apply to the Public Services Fellowships Program.

The following regulations apply to the Public Services Fellowships Program:

(a) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100c (Definitions).

(b) The regulations in this Subpart B.

(20 U.S.C. 1221e–3(a)(1))

PART 196—DOMESTIC MINING AND MINERAL AND MINERAL FUEL CONSERVATION FELLOWSHIPS

161. A new § 196.1–1 is added to read as follows:

§ 196.1–1 Regulations that apply to the Domestic Mining and Mineral and Mineral Fuel Conservation Fellowships Program.

(a) *Regulations.* The following regulations apply to the Domestic Mining and Mineral and Mineral Fuel Conservation Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100c (Definitions).

(2) The regulations in this Part 196.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Divison programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

PART 197—TEACHER CENTERS PROGRAM

§ 197.7 [Revoked]

§§ 197.1, 197.2, 197.8, 197.9 [Amended]

162. The following text is revoked: §§ 197.1(a); the definitions of "Local educational agency," "Non-public school," and "State educational agency" in §§ 197.2; 197.7; 197.8(a)(1), (2), (3), and (6) and (b); the 1st sentence in 197.9; and 197.9(a)(4) and (5)(ii).

163. A new § 197.1–1 is added to read as follows:

§ 197.1–1 Regulations that apply to the Teacher Centers Program.

(a) *Regulations.* The following regulations apply to the Teacher Centers Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 197.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

PART 198—TRAINING FOR HIGHER EDUCATION PERSONNEL

§ 198.8 [Revoked]

§§ 198.1, 198.4, 198.6 [Amended]

164. The following text is revoked: §§ 198.1(a); 198.4(a)(2) and (b)(3); the 1st sentence in 198.6 and 198.6(c); and 198.8.

165. A new § 198.1–1 is added to read as follows:

§ 198.1–1 Regulations that apply to the Training for Higher Education Personnel Program.

(a) *Regulations.* The following regulations apply to the Training for Higher Education Personnel Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 198.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e-3(a)(1))

PART 199a—STATE POSTSECONDARY EDUCATION

166. Section 199a.3 is revised to read as follows:

§ 199a.3 Regulations that apply to the State Postsecondary Education Program.

(a) *Regulations.* The following regulations apply to the State Postsecondary Education Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100b (State Administered Programs) and Part 100c (Definitions).

(2) The regulations in this Part 199a.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division Programs" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e-3(a)(1))

PART 1400—GENERAL

§§ 1400.4, 1400.5 [Revoked]

§ 1400.3 [Amended]

167. The following text is revoked: §§ 1400.3(b); 1400.4; and 1400.5.

168. Section 1400.1 is revised to read as follows:

§ 1400.1 Definitions.

As used in this chapter—"Council" means the National Council on Educational Research; "Director" means the Director of the National Institute of Education.

"Educational research" means research (basic and applied), planning, surveys, evaluations, investigations, experiments, developments, and demonstrations in the field of education (including career education).

"Institute" means the National Institute of Education.

169. Section 1400.2 is revised to read as follows:

§ 1400.2 Regulations that apply to programs of the National Institute of Education.

(a) *Regulations.* The following regulations apply to programs of the National Institute of Education:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Chapter XIV.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e-3(a)(1))

PART 1403—ELIGIBILITY AND APPLICATION FOR RESEARCH GRANT ASSISTANCE

§§ 1403.1, 1403.4, 1403.5, 1403.7, 1403.9, 1403.11, 1403.13, and 1403.15 [Revoked]

§ 1403.10 [Amended]

170. The following text is revoked: §§ 1403.1; 1403.4; 1403.5; 1403.7; 1403.9; 1403.10(a); 1403.11; 1403.13; and 1403.15.

171. Section 1403.2 is revised to read as follows:

§ 1403.2 Eligibility for award.

(a) *Persons eligible.* Except as otherwise prohibited by law, any individual and any public or nonprofit private organization, institution, or agency found by the Director to be authorized and qualified by educational, scientific, or other relevant competence to carry out a proposed research project shall be eligible for an award.

(b)(1) *Projects eligible.* Any project found by the Director to be an educational research project within the meaning of § 1400.1 of this subchapter shall be eligible for an award.

(2) An eligible project may include planning, laboratory, clinical, population, field, statistical, basic, applied or other type of investigation, study, or experiment, dissemination, use, application, implementation, training, development or demonstration, or combinations of those.

(3) An eligible project may either—

(i) Be limited to one—or a particular aspect of a—problem or subject; or

(ii) Consist of two or more related problems or subjects for concurrent or consecutive investigation and involving multiple disciplines, facilities, and resources.

PART 1405—FEDERAL FINANCIAL PARTICIPATION [REVOKED]

172. Part 1405 is revoked.

PART 1407—COST SHARING [REVOKED]

173. Part 1407 is revoked.

PART 1409—GRANT RELATED INCOME [REVOKED]

174. Part 1409 is revoked.

PART 1410—MISCELLANEOUS REQUIREMENTS

§§ 1410.1, 1410.2, 1410.3, 1410.10, 1410.14, 1410.15, 1410.16, 1410.19, 1410.21 [Revoked]

175. The following text is revoked: §§ 1410.1; 1410.2; 1410.3; 1410.10; 1410.14; 1410.15; 1410.16; 1410.19; and 1410.21.

176. Section 1410.7 is revised to read as follows:

§ 1410.7 Principal investigators.

(a) All grants shall be subject to the condition that the principal investigator(s) designated in the application as responsible for the conduct of the approved project shall continue to be responsible for the duration of the project period.

(b) When an investigator referred to in paragraph (a) of this section is absent for three months or longer or otherwise becomes unavailable to discharge this responsibility, the Director may terminate the grant, unless the grantee replaces the investigator with another person found by the Director to be qualified to direct and conduct the approved project.

PART 1412—MONITORING AND REPORTING PERFORMANCE [REVOKED]

177. Part 1412 is revoked.

PART 1414—PROCUREMENT STANDARDS FOR GRANTEES [REVOKED]

178. Part 1414 is revoked.

PART 1415—PROPERTY MANAGEMENT STANDARDS [REVOKED]

179. Part 1415 is revoked.

PART 1417—FINANCIAL MANAGEMENT STANDARDS [REVOKED]

180. Part 1417 is revoked.

PART 1419—FINANCIAL REPORTING REQUIREMENTS [REVOKED]

181. Part 1419 is revoked.

PART 1420—BONDING AND INSURANCE [REVOKED]

182. Part 1420 is revoked.

PART 1422—CONSTRUCTION [REVOKED]

183. Part 1422 is revoked.

PART 1424—ACCOUNTABILITY FOR FEDERAL FUNDS [REVOKED]

184. Part 1424 is revoked.

PART 1430—EXPERIMENTAL PROGRAM FOR OPPORTUNITIES IN ADVANCED STUDY AND RESEARCH IN EDUCATION

§§ [illegible] [Revoked]

§§ 1430.4, 1430.6 [Amended]

185. The following text is revoked: §§ 1430.4(b); 1430.6(g); 1430.9; 1430.11; and 1430.13.

186. Section 1430.1 is revised to read as follows:

§ 1430.1 Regulations that apply to the Experimental Program for Opportunities in Advanced Study and Research in Education.

(a) *Regulations.* The following regulations apply to the Experimental Program for Opportunities in Advance Study and Research in Education:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The general provisions for NIE grants in 45 CFR Parts 1400–1410.

(3) The regulations in this Part 1430.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

187. Section 1430.12 is amended by revoking paragraphs (a), (b), and (c) and by revising the introductory text to paragraph (d), to read as follows:

§ 1430.12 Allowable costs.

(a) (Deleted)

(b) (Deleted)

(c) (Deleted)

(d) Allowable costs include—

(1) (Deleted)

(2) (Deleted)

* * * * *

PART 1450—RESEARCH GRANTS PROGRAM

§ 1450.8 [Revoked]

§ 1450.4 [Amended]

188. The following text is revoked: §§ 1450.4 (2nd sentence only) and 1450.8.

189. Section 1450.1 is revised to read as follows:

§ 1450.1 Regulations that apply to the Research Grants Program.

(a) *Regulations.* The following regulations apply to the Research Grants Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The general provisions for NIE grants in 45 CFR Parts 1400–1410.

(3) The regulations in this Part 1450.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

190. Section 1450.5 is amended by revising paragraphs (a)(1), (b), and (c) and removing paragraph (a)(2) to read as follows:

§ 1450.5 Applications.

(a) * * *

(1) *Preapplication.* (i) The applicant shall submit a preapplication for initial review. Only preapplications prepared according to the format described in paragraphs (b) or (c) of this section will be accepted at this initial stage; other submissions will be returned to the applicant.

(ii) No more than one preapplication per individual will be accepted. Although an institutional applicant may submit more than one preapplication, no more than one preapplication per each principal investigator will be considered. In the event that more than one preapplication per individual or principal investigator is received, the preapplication received earlier will be accepted, and subsequent preapplications will be returned to the applicant.

(2) (Deleted)

(b) *Preapplication format.* With respect to applicants other than State and local governments, the preapplication shall include the following:

(1) A cover sheet completed by the principal investigator indicating—

(i) That the preapplication is submitted to the Research Grants Program of the National Institute of Education;

(ii) The title of the study;

(iii) The category of study under which the applicant believes the project should be reviewed as described in § 1450.6(a);

(iv) The name(s), department, institution, address, and telephone number of the principal investigator(s);

(v) The estimated budget amount; and

(vi) The proposed duration and starting date of the project.

(2) A statement of from three to five double-spaced, typewritten pages summarizing the proposed project, including—

(i) *Description and rationale.* A description of the proposed research, its relation to what is already known and to the problems of American education, and the importance of the expected addition to knowledge; and

(ii) *Procedures.* A description of the procedures to be followed in carrying out the research, including, if appropriate, such concerns as sampling, data acquisition, instrumentation, and data analysis.

(3) A description of facilities and arrangements available to the investigator for conducting the research.

(4) Resume(s) of principal investigator(s), including education, applicable experience, and a list of major publications.

(5) An estimated budget covering direct costs (salaries and benefits, travel, supplies and materials, communication, services, equipment) and indirect costs proposed to be charged against the grant.

(c) *Government preapplications.* Preapplications from governments are subject to the requirements in Subpart N of 45 CFR Part 74.

191. Section 1450.6(a) and (b) is revised to read as follows:

§ 1450.6 Review of applications.

(a) *Review categories.* To facilitate and improve the quality of review of applications by the National Institute of Education, each preapplication and invited full proposal received will be assigned to one of the following categories and will be reviewed together with other applications within the same category:

(1) Learning and instruction.

(2) Human development.

(3) Objectives, measurement, evaluation, and research methodology.

(4) Social thought and processes.

(5) Organization and administration.

(6) Anthropology.

(7) Economics.

(8) Political science.

(9) Legal research.

(b) *Selected issues.* The Institute may periodically identify selected issues of particular significance for American education that will serve as conditions of eligibility or with respect to which priority funding consideration will be given.

* * * * *

§ 1450.7 [Amended]

192. Section 1450.7(b) is amended by deleting the word "prospectus" and

inserting, instead, the word "preapplication."

PART 1451—BASIC SKILLS RESEARCH GRANTS PROGRAM

§§ 1451.7, 1451.8 [Revoked]

§ 1451.4 [Amended]

193. The following text is revoked: §§ 1451.4 (a) and (b) (2nd and 3rd sentences only); 1451.7; and 1451.8.

194. Section 1451.1 is revised to read as follows:

§ 1451.1 Regulations that apply to the Basic Skills Research Grants Program.

(a) *Regulations.* The following regulations apply to the Basic Skills Research Grants Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The general provisions for NIE grants in 45 CFR Parts 1400–1410.

(3) The regulations in this Part 1451.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

PART 1460—STATE DISSEMINATION GRANTS PROGRAM

§ 1460.3 [Amended]

195. The definition of "State educational agency" in § 1460.3 is revoked.

196. Section 1460.1 is revised to read as follows:

§ 1460.1 Regulations that apply to the State Dissemination Grants Program.

(a) *Regulations.* The following regulations apply to the State Dissemination Grants Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The general provisions for NIE grants in 45 CFR Parts 1400–1410.

(3) The regulations in this Part 1460.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

197. Section 1460.4 is amended by revising paragraphs (c), (f), (h) and by deleting paragraphs (a), (d)(3), (e), and (g) as follows:

§ 1460.4 Applicant eligibility.

(a) (Deleted)

* * * * *

(c) A State educational agency (SEA) may submit as many applications as it wishes for intra-State projects but may submit or (under paragraph (d)(1)(i) of this section) participate in only one inter-State project application.

(d) * * *

(3) (Deleted)

(e) (Deleted)

(f)(1) An SEA will receive no more than one award (including any joint award) under each application notice published under § 100a.100 of EDGAR.

(2) An SEA that receives an intra-State award may also participate in one inter-State award to another SEA, as provided in paragraph (d)(1)(i) of this section, under each application notice published under § 100a.100 of EDGAR.

(g) (Deleted)

(h) Any SEA that submits more than one application under paragraph (c) of this section—or that both submits an application or applications and participates in another application submitted by another SEA under paragraph (d) of this section—must rank all of the applications in priority order.

198. Section 1460.5 is amended by revising paragraph (b)(1) and deleting (b)(2) as follows:

§ 1460.5 Types of awards; funding requirements.

* * * * *

(b) * * *

(1) Awards shall not support the salaries of full-time professional or clerical staff.

(2) (Deleted)

* * * * *

PART 1470—EDUCATION AND WORK GRANTS PROGRAM

§ 1470.8 [Revoked]

§ 1470.4, 1470.7 [Amended]

199. The following text is revoked: §§ 1470.4 (a) and (b) (2nd and 3rd sentences only); 1470.7(a), (b) (1) and (2), and (c) (2), (3), and (4); and 1470.8.

200. Section 1470.1 is revised to read as follows:

§ 1470.1 Regulations that apply to the Education and Work Grants Program.

(a) *Regulations.* The following regulations apply to the Education and Work Grants Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The general provisions for NIE grants in 45 CFR Parts 1400–1410.

(3) The regulations in this Part 1470.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

PART 1480—PROGRAM OF RESEARCH GRANTS ON ORGANIZATIONAL PROCESSES IN EDUCATION

§ 1480.10 [Revoked]

§ 1480.4 [Amended]

201. The following text is revoked: §§ 1480.4(b) and 1480.10.

202. Section 1480.1 is revised to read as follows:

§ 1480.1 Regulations that apply to the Program of Research Grants on Organizational Processes in Education.

(a) *Regulations.* The following regulations apply to the Program of Research Grants on Organizational Processes in Education:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The general provisions for NIE grants in 45 CFR Parts 1400–1410.

(3) The regulations in this Part 1480.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

203. Section 1480.8 is amended by revising paragraph (a), (b)(2)(i)(A), introductory text to (b)(4), (b)(4)(vii) and by deleting paragraphs (b)(3), (b)(4)(i)–(iii), (vi), (x), and (d) as follows:

§ 1480.8 Application requirements.

(a) *General.* An applicant shall file an application specifically directed to either the grant or small grant segment of the Program of Research on Organizational Processes in Education.

(b) * * *

(2) *Preapplication format.* The preapplication must include the following:

(i) A cover sheet completed by the principal investigator and by an individual authorized to complete grant applications for the institution, indicating—

(A) That the preapplication is submitted to the Program of Research Grants on Organizational Processes in Education, National Institute of Education; and

* * * * *

(3) (Deleted)

(4) *Full proposal format.* Full proposals must include the following elements. Discussion of objectives and design, described under paragraphs (b)(4)(iv) and (v) of this section, may not exceed 40 pages.

(i) (Deleted)

(ii) (Deleted)

(iii) (Deleted)

* * * * *

(vi) (Deleted)

(vii) If new data are proposed to be collected, the proposal must give evidence of access to suitable organizations for study purposes. Letters of agreement to participate must be included, showing that relevant authorities in school or school-related organizations have reviewed the research plans and agree to take part willingly. A lengthy and complex study that could place special burdens on parts of the educational community may require joint planning and management of the entire project. A proposal for that type of a study must give detailed information to allow reviewers to judge the adequacy of the arrangement.

* * * * *

(x) (Deleted)

* * * * *

(d) (Deleted)

PART 1490—EDUCATIONAL EQUITY RESEARCH GRANTS PROGRAM

§§ 1490.7, 1490.9 [Revoked]

§ 1490.4 [Amended]

204. The following text is revoked: §§ 1490.4(b); 1490.7; and 1490.9.

205. Section 1490.1 is revised to read as follows:

1490.1 Regulations that apply to the Educational Equity Research Grants Program.

(a) *Regulations.* The following regulations apply to the Educational Equity Research Grants Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The general provisions for NIE grants in 45 CFR Parts 1400–1410.

(3) The regulations in this Part 1490.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

PART 1495—LAW AND GOVERNMENT STUDIES IN EDUCATION

§§ 1495.7, 1495.10, 1495.12 Appendix B [Amended]

206. The following text is revoked: §§ 1495.7(b); 1495.10 (b), (c), and (d); 1495.12; in Appendix B, paragraphs (a) (1), (2), (3), (6), (7) (1st sentence only), (9), and (10) and (b); and in Appendix C, paragraphs (a) (1), (2), and (3) and (b).

207. Section 1495.1 is revised to read as follows:

§ 1495.1 Regulations that apply to the Law and Government Studies in Education Program.

(a) *Regulations.* The following regulations apply to the Law and Government Studies in Education Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grants Programs) and Part 100c (Definitions).

(2) The general provisions for NIE grants in 45 CFR Parts 1400–1410.

(3) The regulations in this Part 1495.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

208. Section 1495.9 is amended by revising paragraphs (a), the introductory text of paragraph (b), (b)(1) and (c) and by deleting (b)(2) as follows:

§ 1495.9 Application requirements.

(a) *General.* An applicant shall file an application specifically directed to either the major grant or the small grant segment of the program.

(b) *Major grants.* An applicant for a major grant shall comply with the requirements contained in this paragraph and in Appendices A and B.

(1) *Preapplications.* An applicant shall submit a preapplication for initial review in the format prescribed in Appendix A.

(2) (Deleted)

(c) *Small grants.* An applicant for a small grant shall comply with the requirements contained in Appendix C. An applicant for a small grant does not have to submit a preapplication.

209. Appendix A to Part 1495 is amended by revising the introductory text to paragraph (a), and (a)(1) and by deleting paragraph (a)(2) and (b) as follows:

Appendix A: Administrative Details for a Preapplication for a Major Grant

(a) *Preapplication format.* This appendix provides guidance to applicants concerning the preparation of preapplications for major grants. An applicant that does not follow these suggestions will not be ruled ineligible, but may not be ranked as highly under the evaluation criteria. The statement summarizing the project, paragraph (2) below, must not exceed 10 double-spaced, typewritten pages. The preliminary proposal should include the following:

(1) A cover sheet completed by the applicant or principal investigator—and, if required by the applicant institution, by an individual authorized to complete grant applications for the institution—indicating—

(i) That the preapplication is submitted to the Program of Research Grants on Law and Government Studies in Education, NIE;

(ii) The title of the study;

(iii) The name, department, institution, address, and telephone number of each proposed grantee or principal investigator;

(iv) The estimated budget amount; and

(v) The proposed starting date and duration of the project.

(2) * * *

(b) (Deleted)

PART 1501—FUND FOR THE IMPROVEMENT OF POSTSECONDARY EDUCATION

§ 1501.11 [Revoked]

§§ 1501.3, 1501.5 [Amended]

210. The following text is revoked: The definitions of "Fiscal year," "Nonexpendable personal property," "Nonprofit," "Personal property," "Private," "Public," " Recipient," and "State" in §§ 1501.3; 1501.5 (2nd and 3rd sentences only); and 1501.11.

211. Section 1501.2 is revised to read as follows:

§1501.2 Regulations that apply to the Support for Improvement of Postsecondary Education Program.

(a) *Regulations.* The following regulations apply to the Support for

Improvement of Postsecondary Education Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 1501.

(b) *Exceptions to EDGAR.* The following regulations in EDGAR do not apply to this program:

(1) 45 CFR 100a.201(a) (How to use unweighted selection criteria).

(2) 45 CFR 100a.217(a)(2) (Requiring three or more persons to review applications).

(c) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e-3(a)(1))

212. Section 1501.10 is amended by revising the introductory text to paragraphs (c) and (d), by revising paragraph (d)(2), and by deleting paragraphs (a), (b), (d)(4), (e), (f), (g), and (i) as follows:

§ 1501.10 Application procedures.

(a) (Deleted)

(b) (Deleted)

(c) A preapplication must contain the following information:

* * * * *

(d) An application must contain the information required by EDGAR 45 CFR 100a.107 (Applications for new grants under discretionary grant programs) and the following additional information:

* * * * *

(2) A description of the proposed project, including: its methodology; qualifications of the persons who would conduct it; its short-term and long-term objectives; its specific allocation of available funds in the form of a budget; and the resources (facilities, equipment, and supplies) that the applicant plans to devote to the project.

* * * * *

(4) (Deleted)

(e) (Deleted)

(f) (Deleted)

(g) (Deleted)

* * * * *

(i) (Deleted)

Note.—This Appendix A for Parts 100a–100d will not be published in Title 45 of the Code of Federal Regulations

Appendix A—Analysis of Public Comments and Changes in the Final Regulations

The following is a summary of public comments concerning the EDGAR notice of proposed rulemaking (NPRM) published in the Federal Register on May 4, 1979. Summary is divided into three sections.

The first section, headed "Major Issues," considers the general comments received on five major issues discussed as part of the supplementary information published with the NPRM.

The second section of the summary, headed "General Comments," considers a number of comments and suggestions concerning EDGAR's general approach, format, applicability, timeliness, and similar matters.

The third section, headed "Proposed Rules," concerns comments and suggestions directed to specific sections of EDGAR. The comments and responses in this third section are organized in the same order as the referenced sections are organized in the final EDGAR.

Discussion in the section on "Proposed Rules" includes a number of specific suggestions not directly related to a major issue but directed at sections of EDGAR that address a major issue.

This summary does not include comments that did not suggest how EDGAR should be changed. Nor does it include comments that concern issues beyond the scope of EDGAR, such as provisions in individual program regulations or the General Education Provisions Act (GEPA). Where appropriate, comments that concern issues outside the scope of EDGAR have been referred to the offices within the Department of Health, Education, and Welfare (HEW).

A number of commenters made suggestions regarding the organization of EDGAR or recommended other kinds of technical improvements. A number of these suggestions have been adopted. Some technical revisions also have been made in the language of the regulations. Any change that alters the meaning of a provision of these regulations is summarized—together with the reasons for that revision—in the section headed "Proposed Rules."

Major Issues

Five major policy issues were identified and discussed in the supplementary information published with the NPRM. Many of the comments received and considered by the Education Division in the development of the final regulations were directed to these issues. Comments and suggestions relative to the five issues and the Education Division's responses to them are presented here in the same order as the issues were presented in the NPRM.

Issue: Should EDGAR establish regulations having particular applicability to persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly?

The central purpose of these particular regulations would be to reflect the Education Division's concern that members of traditionally underrepresented groups be provided appropriate opportunities for equitable representation and participation in the planning, operation, and evaluation of projects under grant programs administered by the Education Division.

Comment. A large number of comments were received on this issue. Some commenters suggested that EDGAR not establish regulations having particular applicability to members of traditionally underrepresented groups. Other commenters suggested that the regulations of this type proposed in the NPRM for direct grant programs (Part 100a) be broadened to apply to State-Administered (Part 100b) programs and to include members of groups not mentioned in the examples given. Some commenters suggested that a separate selection criterion be added to give specific emphasis to the selection and funding of projects (1) directed to serving members of traditionally underrepresented groups; or (2) having a project staff that is balanced in terms of members of underrepresented groups. Some commenters suggested that EDGAR encourage grant proposals from women and one commenter said advisory council membership should be evenly divided between men and women.

A number of commenters said the proposed regulations should be retained in EDGAR. Still others said the existing policy of requiring applicants to give assurances of compliance with relevant civil rights statutes and regulations is adequate and nothing else should be added. At least one commenter suggested discontinuing even the assurances required by existing policy. Several commenters asked that the terms "racial or ethnic minorities," "handicapped persons," and "the elderly" be defined.

Commenters who suggested that EDGAR not include regulations regarding members of traditionally underrepresented groups argued that the proposed regulations would—

a. Duplicate Federal and State requirements regarding compliance with applicable civil rights statutes and regulations;

b. Result in divergent program determinations of civil rights compliance requirements, making it impossible for applicants and grantees to use uniform policies in applying for and administering Education Division grants;

c. Result in directing a grant service to persons that the authorizing legislation did not intend to be targets of that service or to persons only incidentally or peripherally involved in the activity or service; and

d. Increase burdens on applicants and grantees by requiring (1) additional information in applications, (2) greater effort to encourage public participation in project planning, and (3) special actions in other areas, including evaluation.

Commenters who suggested that EDGAR include at least the regulations proposed in the NPRM or that those regulations be strengthened or broadened argued that—

a. Existing policies have been ineffective in achieving satisfactory compliance with relevant civil rights statutes and regulations;

b. Relevant civil rights statutes and regulations should be reflected in the regulations that govern administration of Federal educational assistance programs;

c. Regulations are necessary to make sure that everyone concerned with a Federal program and its operation is aware of the relevant civil rights statutes; and

d. There should be both pre-award and post-award determinations of compliance with appropriate civil rights statutes and regulations in order to assure that Federal funds are provided only to grantees who are in compliance with those statutes and regulations.

Response. Certain changes have been made, but the basic policy represented by the NPRM—that EDGAR should contain some special provisions for members of traditionally underrepresented groups—has not been changed. Many of the comments and suggestions were incorrect in their assumption that the relevant provisions of EDGAR are intended to enforce compliance with applicable civil rights statutes. The basic purpose of the provisions is to make applicants and grantees aware that all eligible groups are to receive equitable treatment and consideration in the administration of Education Division programs and the conduct of projects under these programs, regardless of whether the members of those groups are provided special protection or rights by Federal statutes.

Enforcement of applicable civil rights statutes and regulations is presently the responsibility of the Office for Civil Rights, HEW. The EDGAR Provisions do not give Education Division program personnel any responsbility or authority to determine compliance with civil rights requirements; these determinations will continue to be made by the Office for Civil Rights or its successor agency. (The functions of the HEW Office for Civil Rights that are concerned with education will be transferred to the new Department of Education.) The EDGAR provisions do not duplicate Federal and State civil rights compliance requirements.

Under Part 100b States have primary responsibility for assuring that subgrantees provide equitable treatment and consideration in the operation of projects under State-administered programs, while the Education Division has similar responsibility under Part 100a. Although some commenters suggested that the EDGAR provisions on this issue in Part 100a be adapted for and included in Part 100b, the Education Division believes that responsible State authorities should retain primary authority for regulating subgrantees in this area, rather than having requirements imposed by EDGAR. For the most part, the regulations on this subject in Part 100a do not have counterparts in Part 100b (e.g., selection criteria, evaluation, etc.). This is because the State-administered programs, by statute, vest primary administrative responsibility in the State.

The EDGAR provisions do not require that grant services be directed to persons who are ineligible under the authorizing statute for a program. Rather, the EDGAR requirements are designed to help assure that applicants and grantees provide equitable consideration to all persons who are eligible under the program, including those who are members of groups that have been traditionally underrepresented.

The Education Division recognizes that the EDGAR requirements regarding members of traditionally underrepresented groups increase certain burdens on applicants and grantees. The nature and extent of these increased burdens are moderate, however. For example, the information required in an application and the analysis required in an evaluation normally would be included in any adequate description of a project or evaluation of it. Similarly, effective and positive efforts to obtain public involvement in the planning of educational programs would necessarily include the actions required by EDGAR.

After considering commenters' objections to these increased burdens, the Education Division concludes that the goal of achieving greater equity for members of traditionally underrepresented groups justifies the moderate increase in burden. The Education Division agrees with those who suggested that the proposed regulations be retained in EDGAR.

No definitions of "racial or ethnic minorities," "handicapped persons," or "the elderly" have been provided. These terms are used only as examples of "groups that have been traditionally underrepresented" and should not be viewed as either limiting or exhaustive. The basic requirement relates to groups that have been traditionally underrepresented. For this reason, applicants should first make a determination as to whether some groups in the community have traditionally been underrepresented and then seek to overcome that underrepresentation.

This consideration and associated efforts should not be directed solely to members of the groups mentioned several times in these regulations (racial or ethnic minority groups, handicapped persons, women, and the elderly), but should include other groups, if appropriate, such as cultural minorities, the poor, the young, temporary residents, or others not specifically mentioned in the regulations but, nonetheless, traditionally underrepresented in activities or programs in the local area.

The Education Division also concluded that EDGAR should not include pre-award provisions designed to assure that Federal educational assistance funds are granted only to applicants who are determined to be in compliance with applicable civil rights statutes and regulations before a grant award is made, as some commenters suggested. This is a matter that will be considered in the context of the regulations under Title VI of the Civil Rights Act and other civil rights statutes. EDGAR does not include civil rights compliance regulations, but merely references those regulations in § 100a.500 and § 100b.500 for the convenience of readers.

With regard to the proposed regulations that addressed this issue, the following changes have been made in particular sections of EDGAR:

Section 100a.110 has been renumbered as § 100a.111, a new paragraph (d) has been added, and paragraph (e) has been revised. New § 100a.107 and § 100a.108

make it clear that this section only applies to direct formula grant programs, not to discretionary grant programs. The revisions in the text of § 100a.111 make it clear that the section is intended to focus an applicant's attention on persons who are members of traditionally underrepresented groups. Subject to eligibility requirements in a program's statute and its regulations, this focus is expected to be used both in determining project beneficiaries and in designing project objectives.

Section 100a.202—the selection criterion on plan of operation—has been revised to state that an application will be evaluated in part on how the applicant plans to provide equal access and treatment to eligible project participants who are members of traditionally underrepresented groups. This change parallels the clarification in § 100a.111, and will affect all discretionary grant programs that include this criterion in their regulations.

Section 100a.206—the selection criterion on adequacy of resources—has been amended by deleting the reference to underrepresented groups. Access to facilities are better governed by the regulations regarding nondiscrimination referenced in § 100a.500 and § 100b.500. Other methods of judging "adequacy" of facilities and equipment for these groups are better regulated under individual programs, which can provide clearer and more specific guidance than general regulations.

The Education Division has not adopted suggestions for the addition of selection criteria or for the addition of requirements to encourage grant applications from women or to seek balance in project staffing or advisory councils. The EDGAR selection criterion on key personnel (§ 100a.203) seeks to assure that project staff is qualified and that members of underrepresented groups have equitable opportunities for employment by an applicant. The Education Division does not believe that additional general regulations on staffing are necessary.

As for encouraging women to apply for grants, it is Education Division policy to encourage applications from all statutorily eligible applicants rather than from preselected groups. EDGAR does not regulate on program advisory committees because of the variety of statutory provisions and programmatic needs.

The proposed requirement in § 100a.620—that grantees avoid race stereotype and sex bias in materials developed under the project—has been eliminated. Public reaction to the proposed requirement was mixed. The Secretary of Education has decided to study this issue, and therefore the provision will not be adopted at this time. If it is decided at a later date that a regulation is necessary, a notice of proposed rulemaking soliciting further public comment will be published in the **Federal Register**. However, grantees are expected to be sensitive to the necessity of avoiding inappropriate biases and stereotypes in materials developed with Federal funds.

Issue: Participation of students enrolled in private schools.

Comment. Several commenters said EDGAR should consolidate regulations on the participation of students enrolled in private schools. Other commenters said proposed EDGAR provisions on the subject should be deleted because they do not consolidate all relevant program provisions but only part of them, thus creating confusion. Commenters also suggested that the proposed EDGAR provisions establish some boundaries on public and private school responsibilities.

Other commenters said EDGAR provisions should clarify legal responsibilities and be more specific about the programs to which the proposed EDGAR regulations apply. Several asked for other forms of guidance with respect to the requirements of statutes, court decisions, and EDGAR.

Some commenters suggested that public schools are being unduly burdened by EDGAR with regard to services to students enrolled in private schools. These commenters said public schools are required to—

(a) Consult with private schools too early in the project planning process;

(b) Be fiscally responsible for private school programs;

(c) Identify times and places to provide services;

(d) Act as conduits for project proposals and funds for private school students; and

(e) Compete with private schools for grants and subgrants.

One commenter asked that direct grant programs include a selection criterion providing up to five percent of a program's selection points for equitable participation of private school students.

Response. A number of changes have been made, but the major substantive requirements of the regulations on services or responsibilities of applicants to private school students proposed in the NPRM have been retained. In two sections those requirements have been made explicit rather than left implicit. The EDGAR consolidation of these requirements should help ensure consistent Federal, State, and local policies regarding participation of private school students in the affected programs. It is expected that exceptions to these general rules can be kept to a minimum, thereby maintaining this consistency.

Under certain Federal statutes, applicants, grantees, and subgrantees are required to provide opportunities for eligible private school students to participate in Federal programs. The services provided are directed to the eligible private school students, not to the private schools they attend.

In carrying out their responsibilities, grantees and subgrantees are prohibited from serving as a conduit for Federal funds and from allowing private schools control of the Federal Funds used to provide program benefits to private school students. Under these Federal programs private schools generally are not eligible applicants, so there is no competition between them and other applicants for grants or subgrants. The requirements for identifying times and places for providing services are essentially the same requirements as apply to the involvement and participation of public school students.

On the question of applicability of the regulations, program statutes and regulations identify those programs that require that students in private schools be provided an opportunity to participate.

After considering the general comments and suggestions received, the Education Division concluded that there was a need to clarify proposed requirements concerning private school students. In addition, the EDGAR selection criteria in § 100a.202 (Plan of operation) has been amended to include consideration of private school children. (See the discussion below under § 100a.202 in the "Proposed Rules" section of this appendix.)

The responsibilities of public schools applying for direct grants have been clarified with respect to project descriptions (§ 100a.119), open meetings on applications (§ 100a.140), evaluations (§ 100a.590), and the requirement to provide "genuine opportunities" for participation (§ 100a.650). The responsibilities of public schools or of representatives of private schools have not been made more explicit, but some clarification has been provided in response to specific comments on §§ 100a.650 and 100b.650–100b.661 in the "Proposed Rules" section of this appendix.

The major clarifications are as follows:

1. Applicants must make appropriate and diligent efforts to inform and involve representatives of private school students in planning for federally assisted programs.

2. The Education Division expects applicants and recipients to seek needed information about students enrolled in private schools. This information may be provided by representatives of students enrolled in private schools, by the students themselves, or by other responsible parties. Nothing in the Education Division regulations requires any party to take actions that would be futile because of lack of information from or lack of participation by representatives of private school students. The regulations do not require consultation with representatives of private school students who do not respond to reasonable attempts to consult with them.

3. Applicants are required to consult with representatives of private school students about all aspects of the development and design of a project. Grantees and subgrantees are required to consult about any decision that may affect the participation of the private school students in a project.

Issue: Should EDGAR include general selection criteria for direct grant programs?

Comment. A number of commenters suggested that EDGAR include general selection criteria for direct grant programs. Several commenters suggested that these criteria be given standard weights in EDGAR, but some said programs should have freedom to increase or decrease the weights. Commenters also suggested that all selection criteria that apply to a particular program should be published in the regulations of that program. No commenters opposed including general selection criteria in EDGAR, although some hesitation was expressed about the use of standard weights for the criteria.

Response. No change has been made. Weighted selection criteria are retained in EDGAR. However, program regulations will repeat the EDGAR criteria, rather than merely adopt them by reference. As proposed in the NPRM, program regulations may increase the relative weights assigned to the EDGAR criteria, but may not decrease the relative weight of any criterion that is used by the program. Allowing each program to decrease the weights assigned to the EDGAR criteria would have the effect of reducing the relative importance of one or more of the criteria below the level considered minimal for it.

Issue: What should be the copyright policy of the Education Division?

Comment. Most of those who commented on this issue suggested that EDGAR allow a grantee unlimited copyright. No commenter recommended that EDGAR continue the former "limited copyright" policy of the Education Division. Of the commenters supporting the proposed new policy, many advocated the second option discussed in the NPRM: adoption of the 45 CFR Part 74 policy which permits unlimited copyright by a grantee unless otherwise provided in a particular grant. Other commenters suggested that EDGAR adopt the third option presented in the NPRM: permitting individual programs to establish their own copyright limitations through provisions in their respective program regulations. One commenter questioned the fact that EDGAR does not require a competitive process for publisher selection.

Response. No change has been made. The Education Division agrees with the commenters who said that a policy of generally allowing a grantee unlimited copyright will be more conducive to desire dissemination than the former policy of limited copyright. These commenters said the proposed policy would help a grantee deal with publishers and would allow a grantee to benefit from royalty income. Under § 100a.2, a program may establish regulations that differ from EDGAR. This section would permit a program to establish its own copyright policy if that were considered necessary for the program.

The Education Division does not believe that a competitive requirement for prospective publishers is necessary, but encourages each grantee to use care in selecting a publisher to avoid excessive costs to consumers.

Issue: Should EDGAR include regulations on "cooperative agreements?"

Comment. Several comments were received on the matter of whether EDGAR should provide special rules for cooperative agreements. Some commenters suggested that cooperative agreements be treated; others, that they not be treated. None of those who recommended treating cooperative agreements in EDGAR gave reasons to support their suggestions. Those who gave reasons that EDGAR should remain silent on cooperative agreements stated, in effect, that it would be better to wait until the Education Division has had some experience with cooperative agreements before it attempts regulations.

Response. No change has been made. EDGAR will not provide any special rules at this time. The Education Division has had little experience with cooperative agreements. Further, the Office of Management and Budget currently is conducting a congressionally mandated study of cooperative agreements, and it is expected that the outcome will provide some needed guidance. When the matter is clarified, EDGAR can be amended to include special rules for cooperative agreements, if appropriate. In the interim the general rules for grants in 45 CFR Part 74 and in EDGAR will apply to cooperative agreements. (The term "grant" is defined in 45 CFR 74.3 to include all forms of financial assistance, which would include the provision of funds under a cooperative agreement.)

General Comments

Comments. A number of commenters expressed concern that EDGAR might make it more difficult to prepare a grant application and to properly administer a project. These commenters objected to the EDGAR practice of adopting applicable statutory provisions and regulations by reference instead of repeating the pertinent statutory and regulatory language in EDGAR. One commenter summarized these objections and recommendations by saying "We want . . . all the eligibility requirements from 45 CFR Part 74, from EDGAR, from the law, from the program regulations in one place and all the application requirements in one place and all the administrative responsibilities in one place."

Response. Some changes have been made. Appropriate cross references to 45 CFR Part 74 have been added to EDGAR to make it easier for users to find relevant sections. As was done with the NPRM, a copy of 45 CFR Part 74 is appended to EDGAR for the convenience of readers. As a next step, the Education Division will begin the work necessary to incorporate the substantive text of 45 CFR Part 74 into EDGAR. The resulting combined regulations will be published in the **Federal Register** at a future date. Further, pertinent statutory requirements have been written into EDGAR, rather than being cross-referenced. These changes should serve to reduce the necessity of applicants and grantees having to refer to several documents.

The Education Division will consider further means of alleviating this problem. However, the consolidation of general grant regulations in one document, first done in the General Provisions for Office of Education

Programs in 1973, has proved to be an effective means of preventing inconsistency in program regulations that cover the same subject (rules for federally financed construction, for example). EDGAR serves this necessary function and, therefore, must be retained.

Comment. A commenter suggested that EDGAR should state where the applicant can obtain a copy of the General Education Provisions Act.

Response. No change has been made. Part VI of the Introduction to Regulations of the Education Division in the preamble to EDGAR, lists appropriate resources for persons needing information Education Division programs.

Comment. A commenter suggested that EDGAR should state that in cases in which program statutes and implementing regulations are inconsistent with EDGAR the statutory requirements and the implementing regulations for the program shall prevail.

Response. No change has been made. The provision recommended by the commenter is the system used in the current OE general provisions regulations. Under EDGAR, as stated in §§ 100a.2 and 100b.2, if statutory or regulatory requirements for a program conflict with the requirements of EDGAR, the implementing regulations for that program will identify the sections of EDGAR that do not apply. This is intended to reduce confusion as to whether an EDGAR rule applies to a particular program. Unless there is a specific exception, a reader can assume that EDGAR applies. Of course, some regulations in EDGAR are self-limiting. For example, the regulations in §§ 100b.650–100b.662 apply only if the program statute specifically requires an opportunity for participation by students enrolled in private schools.

Comment. A commenter suggested that the Education Division develop a procedure to review program regulations that conflict with EDGAR.

Response. A procedure has been established to review all program regulations to make them consistent with EDGAR. Some exceptions to EDGAR are necessary because of statutory variations among different programs or because of the nature of a particular program.

Comment. A commenter suggested that the issuance of EDGAR at this time could cause confusion if a Department of Education is established.

Response. EDGAR is being issued at this time to enable the Education Division to implement the Education Amendments of 1978, and to govern grants that will be made before the new Department of Education takes effect. Because a Department of Education has been created, EDGAR will be reviewed and necessary technical changes will be made. The Education Division believes that the consolidation of common program provisions in EDGAR will serve as a basis for further consolidation of administrative provisions that will be required for the new Department. In the meantime, EDGAR is needed to govern grants made in the current fiscal year, particularly since it implements the new general grant administration polices in 45 CFR Part 74. Under the Department of Education Organization Act (Pub. L. 96–88), all regulations of the Educaiton Division, including EDGAR, will be automatically transferred to the new Department.

Comment. A commenter suggested that a provision should be added to EDGAR to allow the appropriate official of the Education Division to waive Federal requirements governing a grantee's administrative responsibilities if the grantee can show that its own administrative standards offer suitable protection against misuse of Federal funds.

Response. No change has been made. The major provisions of EDGAR are designed to assure equal treatment of applicants and grantees. A waiver procedure could lead to unequal treatment of applicants and grantees. Further, a waiver procedure based on the specific conditions suggested would, in some instances, be contrary to statutory requirements. However, deviations from the administrative requirements of 45 CFR Part 74 are permissible in the circumstances outlined under 45 CFR Part 74.6.

Comment. A commenter suggested that EDGAR should require project advisory committees and review panels to include people knowledgeable about problems of sex bias and sex stereotyping.

Response. No change has been made. Each individual program currently maintains its own list of qualified experts, selected on the basis of criteria determined by the nature of the program. EDGAR does not regulate the qualifications of review panel members nor does it regulate on the issue of project advisory committees. Decisions on these matters are left to program officials and may, if appropriate, be included in program regulations.

Comment. A commenter requested clarification on the eligibility of nonprofit organizations for grants and the application procedures they should follow.

Response. No change has been made. Nonprofit organizations are covered by all sections of EDGAR unless a section specifies a category of organization that excludes them. See 45 CFR Part 74, Subpart Q, which provides separate cost principles for nonprofit organizations. Proof of nonprofit status is governed by § 100a.51 of EDGAR.

Comment. A commenter suggested that a provision be added to EDGAR that would authorize the evaluation of educational materials that are developed without Federal support.

Response. No change has been made. This issue will be handled in the regulations for the National Diffusion Network. Those regulations were published in the **Federal Register** as a notice of proposed rulemaking on June 25, 1979 (44 FR 37178).

Comment. A commenter suggested that a provision be added to EDGAR to require the Education Division to allow the proposed costs for Alaskan projects to exceed by 20 percent the proposed costs for other projects conducting comparable activities in non-Alaskan locales. Another commenter suggested that the cost of providing regular educational services in a project area should be taken into consideration in determining if a proposed project's costs are "reasonable" under terms of § 100a.204(b)(2).

Response. No change has been made. It is the policy of the Education Division that, whenever feasible, local cost levels are taken into account in determining if project costs are "reasonable."

Comment. A commenter said that the preamble to EDGAR cited Section 400A(a)(1) of GEPA as legal authority for EDGAR. The commenter questioned the adequacy of the section as legal justification for EDGAR.

Response. No change has been made. The preamble to the proposed regulations cited Section 400A(a)(1) of GEPA only in reference to the Education Division's intention to implement new data collection procedures at a later date. The legal authority for EDGAR is Section 408(a)(1) of the General Education Provisions Act (20 U.S.C. 1221e–3(a)(1)), unless otherwise noted. Section 408(a)(1) gives appropriate officials of the Education Division general authority to issue regulations for administration of the programs of the Division.

Proposed Rules

PART 100a—DIRECT GRANT PROGRAMS

Subpart A—General

Regulations that Apply to Direct Grant Programs

§ 100a.1 Programs to which Part 100a applies.

Comment. One commenter suggested that the listing of programs in § 100a.1 should be expanded to indicate whether or not a program is subject to the provisions of OMB Circular A–95—Federal cooperation with State and local governments in the evaluation, review, and coordination of Federal assistance programs and projects. The same suggestion proposed that such an indication in the table in § 100a.1 could be used instead of the separate listing in § 100a.170.

Response. No change has been made. The number of programs in Part 100a to which Circular A–95 applies is relatively small and they can be more readily and easily identified for readers in the separate listing in § 100a.170 than as part of the listing in § 100a.1.

Changes. The list of programs has been updated to conform to changes made in the Education Amendments of 1976 (Pub. L. 95–561).

§ 100a.2 Exceptions in program regulations to Part 100a.

Comment. One commenter asked if EDGAR applies to Public Service Fellowships, inasmuch as application for the fellowships is made through a common application for both the fellowships and the Public Service Institutional Grants made under Sections 901 through 904 of the Higher Education Act, which is covered in Part 100a.

Response. No change has been made. Part 100a applies to Public Service Institutional Grants under 45 CFR Part 194, Subpart A, but does not apply to fellowships awarded to individuals or allotted to institutions by the Commissioner under Subpart B of Part 194. However, the definitions in Part 100c apply to both programs.

Comment. One commenter suggested that this section be revised to allow program regulations to identify the sections of Part 100a that apply to the program, rather than simply identifying those that do not apply.

Response. No change has been made. If appropriate, a program's regulations may specify that only certain sections of EDGAR apply and all others do not apply. Section 100a.2 does not require the identification to be made section by section, but allows a general statement if it is more convenient for the program regulations to do that.

Comment. One commenter suggested that the effectiveness of EDGAR will be lost by exceptions and different interpretations unless program regulations are written so they do not conflict with EDGAR.

Response. No change has been made. Some exceptions to EDGAR are necessary because of statutory variations among different programs or by the nature of a particular program. However, it is the policy of the Education Division to keep exceptions to a minimum.

Subpart C—How to Apply for a Grant

The Application Notice

§ 100a.100 Publication of an application notice; content of the notice.

Comment. One commenter suggested that a provision be added to specify that annual application notices will be sent to all applicants that have sought funding during the previous three years.

Response. No change has been made. The reason for publication in the Federal Register is to provide general notice that applications are being solicited. Some programs mail copies to individual applicants in addition to the notice, but it is not considered feasible to have a general provision that requires individual mailings by all programs.

Changes. Proposed paragraph (c) of this section has been deleted as unnecessary. The revision does not represent any change in policy but eliminates reference to an internal Education Division practice of generally publishing a single application notice for all discretionary grant programs. This practice does not require regulation.

§ 100a.101 Information in the application notice that helps an applicant apply.

Changes. Various changes have been made in paragraph (a) to clarify the information that will be in an application notice. For example, the use of multi-year funding and any limits on the length of the project period will be included.

§ 100a.102 Deadline date for applications.

Comment. One commenter suggested that § 100a.102 should be shortened by consolidating the provisions of §§ 100a.102(b) and 100a.102(c) related to satisfying the deadline requirements for submitting applications. As proposed, § 100a.102(b) applies only to applications for new projects and § 100a.102(c) applies only to applications for continuation projects. The same commenter suggested that similar consolidations could be made throughout the proposed regulations.

Response. No change has been made. The provisions of § 100a.102(b) and 100a.102(c) are intended to be substantially different in effect. If an applicant for a new project fails to meet the requirements of § 100a.102(b), the application is not considered. However, if an application for a continuation award is late, the application still may be considered and the applicant granted an award, if the appropriate official of the Education Division chooses to do so.

Changes. Three changes have been made in this section, to conform to current Education Division practice, as follows:

1. The requirement to deliver an application "to the Education Division" has been changed to provide that delivery will be made "to the address specified in the application notice."

2. Two additions have been made with regard to the "proof of mailing" provisions. One allows the proof to be "A dated shipping label, invoice, or receipt from a commercial carrier" and the second is "any other proof of mailing acceptable to the appropriate official of the Education Division."

3. A new paragraph (e) has been added to specify that if an application is mailed through the U.S. Postal Service, the Education Division does not accept either a private metered postmark or a mail receipt not dated by the U.S. Postal Service as proof of mailing.

Application Contents

§§ 100a.107–100a.119

Comment. Several commenters suggested that applicants will be confused by three different sets of requirements, each of which can be understood to constitute a different format for the preparation of applications. The three sets of requirements mentioned by the commenter are—

1. The application content requirements contained in §§ 100a.107–100a.119;

2. The selection criteria contained in §§ 100a.202–100a.206; and

3. The instructions given in the application information package for completing part IV of the standard application form prescribed by OMB Circular A–110. The commenters proposed that a means be found to have one application format.

Response. A change has been made. The format for an application is established by the Education Division for each program in accordance with the requirements of the statutes and regulations applicable to that program. The regulations in 45 CFR Part 74, a copy of which is appended to EDGAR, implement the policies in OMB Circulars A-102 and A-110.

EDGAR contains requirements that affect the application form, but the form for each program is accompanied by all relevant instructions. EDGAR includes these provisions to avoid repetition in individual program regulations and to achieve consistent treatment among Education Division programs. However, to avoid unnecessary duplication and possible inconsistent requirements, §§ 100a.107 and 100a.108 have been revised to clarify the information that must be submitted. The revisions eliminate the overlap between the EDGAR application content requirements and the EDGAR selection criteria by limiting some of the application content requirements to formula grant programs, which do not use selection criteria.

Changes. Proposed §§ 100a.109–100a.115 have been renumbered as §§ 100a.110–100a.116.

§ *100a.107 Applications for new grants under a discretionary grant program.*

This section has been revised to apply only to applications for new grants under discretionary grant programs. As revised, the section incorporates the substance of proposed § 100a.108. The revised section also enumerates the provisions of EDGAR that specify information to be included in each application that the section covers.

§ *100a.108 Applications for new grants under a formula grant program.*

This section has been added to enumerate the information that is required in each application for a new grant under a formula grant program administered directly by the Education Division.

§ *100a.108 Address each selection criterion. [Proposed]*

Comment. One commenter suggested that this section be clarified as to whether or not each criterion must be discussed in a separate and clearly identifiable section of the application.

Response. No change has been made. The specific format and organization of an application is either specified in the program's application forms or instructions or is left to the judgment and discretion of the applicant. How this is to be accomplished is not restricted by these regulations.

Changes. The substance of this proposed section has been incorporated into § 100a.107.

§ *100a.109 Changes to application; number of copies.*

Changes. Paragraphs (a) and (b) of proposed § 100a.116 have been rearranged and the section has been renumbered as §100a.109.

§ *100a.110 Assure compliance with appropriate requirements of law.*

Comment. Several commenters suggested that the assurances required under §100a.110 should be required from an applicant only once, rather than with each application.

Response. No change has been made. Section 100a.110 requires that an application for a direct grant include a single, general assurance that a grantee will comply with special requirements of law, program requirements, and administrative requirements. This general assurance applicable to all programs will replace a number of separate specific assurances that many programs previously required and thus constitutes a significant reduction in application content. The assurance is printed in each program's application form and is, therefore, automatically submitted by each applicant. To maintain and accurately use a file containing this general assurance from each of the many thousands of prospective applicants would constitute a significant recordkeeping and procedural burden for the Education Division and would not reduce paperwork for the applicants.

§ *100a.111 Describe the project.*

Changes. Two changes have been made.

1. Proposed paragraph (c) has been deleted because it was redundant with proposed paragraph (d), which has been redesignated as paragraph (c).
2. Proposed paragraph (e) has been rewritten as paragraphs (d) and (e) to make it clear that the description of a proposed project is to describe intended program participants and beneficiaries and the expected effects of the project on persons who are members of groups that have been traditionally underrepresented. (See discussion of this revision—under the issue on provisions relating to members of groups that have been traditionally underrepresented—in the "MAJOR ISSUES" section of this summary.)

§ *100a.112 Include a proposed project period and a timeline.*

Comment. One commenter asked if the term "budget period" refers to a period of time that is quarterly, monthly, annually, or some other length.

Response. No change has been made. The term is defined in Part 100c as "an interval of time into which a project period is divided for budgetary purposes" and can be variable, depending on the project. Usually, the budget period is 12 months.

Comment. One commenter suggested that all school-based projects should operate on a July 1 through June 30 fiscal year.

Response. No change has been made. Setting a project fiscal year of a particular period for all programs would remove flexibility to meet particular program and grantee needs. For example, some school-based projects might begin in the fall and continue through the following summer. A project period of July 1 through June 30 would be inappropriate for these and other projects.

§ *100a.113 Describe key personnel.*

Comment. A number of commenters suggested that the requirement to give the name and qualifications of the project director and other key project personnel should be revised to allow the application to include only job descriptions or qualifications of personnel, if actual employees are unknown at the time the application is filed.

Response. A change has been made. Except for the principal investigator for a proposed research project, the requirement has been revised to require that names be provided only if known at the time of application. If names are not known, an applicant may give a description of qualifications of key personnel to be employed.

§ *100a.115 Describe the evaluation plan.*

Comment. One commenter suggested that a separate evaluation plan should not be required for each proposal, inasmuch as it sometimes is more logical for the proposed evaluation to be integrated into the description of the project.

Response. No change has been made. The section does not require a separate evaluation plan but merely a description of the evaluation plan. If appropriate, the applicant may integrate the description into the overall project description. However, the evaluation plan must be sufficiently clear to enable reviewers to judge the application and to award points.

Comment. One commenter suggested that EDGAR require all proposed evaluations to include an analysis of the differential impact of projects on the sexes and on various racial and ethnic groups within each sex.

Response. No change has been made. While the Education Division is committed to advancing educational equity, the Education Division is also concerned with reducing the paperwork burden on applicants and grantees. Section 100a.590 requires a grantee in its project evaluation to assess the effect of the project on persons being served by the project, including persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly. Without statutory authority for requiring more explicit detail in project evaluations, the Education Division is reluctant to require grantees under all programs to include in their evaluations an analysis as specific as the commenter has proposed. Individual program regulations may require more specificity, if appropriate.

Changes. 1. Because some evaluations are explicity required by statute, § 100a.115 has been revised to refer to evaluations required by both statute and regulations.

2. The revisions also make it clear that the section refers to the applicant's plan to evaluate the project.

§ *100a.116 Demonstrate capability; include evaluation of completed project.*

Comment. Two commenters suggested that the requirement for submitting an evaluation of a completed project be modified to allow for the possibility that no evaluation had been completed at the time of application for the new project.

Response. A change has been made. Section 100a.116(b) has been changed to require an evaluation only if one has been completed at the time the application is submitted.

§ *100a.118 Application for a continuation award.*

Changes. Proposed paragraph (b)(1) requiring compliance with the deadline date for continuation applications has been deleted as unnecessary because it repeats the requirements in § 100a.102(c), which is cross referenced in this section.

§ *100a.119 Information needed if private school students participate.*

Comment. Several commenters suggested that the application include more explicit information related to services to children enrolled in private schools if these services are required or permitted under the authorizing statute.

Response. A change has been made. A new § 100a.119 has been added to require that under certain programs an applicant must include information in its application describing how the project will fulfill Federal requirements to serve children enrolled in private schools.

Joint Funding Simplification Procedures

§ *100a.124 Applications and preapplications under the Joint Funding Simplification Act.*

Changes. A number of sections have been added to the final EDGAR to specify the procedures used by the Education Division to implement the Joint Funding Simplification Act of 1974. Section 100a.124 lists the other sections in EDGAR that have been amended to implement the Joint Funding Simplification Act. The procedures in EDGAR supplement the procedures in OMB Circular A-111 (41 FR 32040), published on July 30, 1976. The Office of Education published procedures to supplement this circular on May 18, 1979 (44 FR 29164), and these were used as the basis for the procedural rules in EDGAR. The sections added to EDGAR replace the procedures published on May 18, 1979.

Separate Applications—Alternative Programs

§ *100a.126 Application must list all programs to which it is submitted.*

Comment. Several commenters suggested that § 100a.126 should be revised to clarify its meaning.

Response. A change has been made. The title of this section has been changed to better describe the content of the section. Also, some changes have been made in the wording to make its meaning clearer. The purpose of this section and of § 100a.125 is to allow applicants to submit an application to any program from which the applicant thinks it may get funded.

This section requires an applicant to inform the Education Division of any programs from which the applicant seeks funding for the same project. The appropriate official of the Education Division needs this information to carry out official duties under Subpart D. For example, an applicant may submit an application to two programs under either of which the proposed activity could be fully funded. The application may rate highly enough under both programs to deserve funding. However, the appropriate official cannot fund the project for more than 100 percent of the cost of the project. (Cross-reference—See § 100a.233 Setting the amount of the grant.)

If the appropriate official knows in advance all the programs from which an applicant seeks funding, then the official can coordinate the selection and grantmaking procedures under Subpart D.

Preapplications

§ *100a.131 Consideration of a preapplication.*

Comment. Two commenters suggested that preapplication procedures not be used by the Education Division, and one commenter suggested that preapplication procedures be used more extensively.

Response. No change has been made. As proposed, the regulations simply allow the use of preapplication procedures. Whether preapplication procedures are useful is an issue that is decided separately for each program. In some programs, the use of preapplications can reduce the paperwork burden on applicants, but in other programs there would be no benefit.

Change. Proposed § 100a.130 has been renumbered as § 100a.131.

§ *100a.133 Result of a preapplication.*

Comment. One commenter suggested that it should be made clear whether an applicant may apply under a program even if the appropriate official of the Education Division informs the applicant that it is ineligible for assistance under the program.

Response. No change has been made. Although the regulations do not preclude an ineligible applicant from applying, under § 100a.216(a)(1) an application from an ineligible applicant is not considered for a grant award but is returned to the applicant. A cross reference to § 100a.216 has been added to § 100a.133 to make this outcome clear.

Comment. One commenter suggested that an applicant that is ineligible for assistance should be told why it is ineligible.

Response. A change has been made. Section 100a.133(a)(3) has been revised to provide that an explanation of why an applicant is ineligible will be provided.

Change. Proposed § 100a.132 has been renumbered as § 100a.133.

Open Meeting Certification Under Certain ESEA Programs

§ *100a.139 The local educational agency shall hold an open meeting.*

Comment. Two commenters suggested that giving each person who attends a required public meeting an opportunity to comment is too broad and could result in lengthy meetings at which endless comments might be used to block timely, official action.

Response. No change has been made. Paragraph (c) of this section requires only that a local educational agency give persons who attend a public meeting an opportunity to comment. This does not mean that unlimited time must be devoted to comments. It is possible, for example, for the local educational agency to place reasonable limits on the amount of time that each person may speak when many people want to speak, or to permit written comments to be submitted by those who do not have time to make a full oral presentation.

Comment. One commenter suggested that the requirements related to open meetings should apply only to applications for grants of $100,000 or more.

Response. No change has been made. These regulations implement a statutory requirement for ESEA programs. The statute does not authorize the limit suggested by the commenter.

§ *100a.140 Give notice of the open meeting; make information available.*

Comment. One commenter suggested that this section be revised to require that notice of the planned meeting be in both English and the primary language of any population group that is a direct target of the proposed project.

Response. No change has been made. The notice should be given both in English and in languages other than English, if necessary to communicate with persons or groups affected by the application or to communicate with members of other groups of the kind referred to in § 100a.140(c).

Comment. Several commenters suggested that § 100a.140 be revised to delete requirements for special or extra announcements to ensure that members of groups that have been traditionally underrepresented have an opportunity to participate in the open meeting. Another commenter suggested that the applicant should be required to provide evidence in its application that steps were taken to involve members of traditionally underrepresented groups in the open meeting.

Response. No change has been made. Section 100a.140 does not necessarily require special or extra announcements. It simply requires that reasonable consideration and effort be given to assuring that members of traditionally underrepresented groups have an equal opportunity to receive information about the planned meeting and to participate in it. Requiring evidence that these steps have been taken would place an unwarranted burden on many applicants.

Other changes. See the discussion at the beginning of this Appendix ISSUE: Participation of students enrolled in private schools.

§ *100a.141 Certify that open meeting was held.*

Comment. Three commenters suggested deleting the provisions that require an applicant local educational agency to certify that it has considered all comments and recommendations made at a required open meeting and has included the results of its consideration in the application.

Response. A change has been made. It is reasonable to require an applicant to certify that it has conscientiously reacted to all suggestions and recommendations. However, the section has been revised to make it clear that the applicant is not required to identify each recommendation, decision, and consequence in its application, but merely to certify that it amended its application, as appropriate, in light of those comments and recommendations.

State Approval Procedures

§ *100a.150 Review procedure if State must approve applications; purpose of §§ 100a.151–100a.153.*

Comment. One commenter suggested that the regulations should include a list of programs to which State approval procedures apply.

Response. No change has been made. Programs that require State approval will specify in their regulations that State approval is required.

§ *100a.151 When an applicant under § 100a.150 must submit its application to the State; proof of submission.*

Comment. One commenter suggested that the requirement that an application requiring State approval be sent to the State 15 days before the deadline for its submission to the Education Division should be changed to require that the submittals be made simultaneously.

Response. No change has been made. The requirement gives a State 15 days in which to approve or disapprove the proposal before it is sent to the Education Division. If applications were sent simultaneously to both the State and the Education Division, applications that the State disapproves within the 15-day period would be sent to the Education Division. Inasmuch as the Eduation Division, under these programs, can only fund applications approved by the State, the 15-day period—by enabling States to give early notices of disapproval—can serve to avoid wasted effort for both the applicants and the Education Division.

Comment. One commenter suggested that the postmark provisions regarding the mailing of applications to the Education Division should be extended to cover mailing to State offices, when the latter mailings are required.

Response. No change has been made. The present provision requires only that a copy of the letter requesting State approval be attached to the application sent to the Education Division. If the postmark requirements of § 100a.102 were extended to include submission to the State, applicants would be required to include proof of the postmark with the application to the Education Division. This would involve an undue and unnecessary burden on the applicant and would be difficult for the Education Division to administer effectively.

§ *100a.152 The State reviews each application.*

Comment. One commenter suggested that this section should include the criteria to be used by a State in reviewing an application requiring State approval.

Response. No change has been made. The criteria used by the State are determined by the State on the basis of the authorizing statute and the program regulations. The criteria used by a State are not subject to consolidation in EDGAR.

§ 100a.153 **Deadlines for State approval.**

Comment. One commenter suggested that the appropriate offical of the Education Division be required to publish a deadline in the **Federal Register** for receipt of State approvals of applications, rather than having the option to publish or not to publish a deadline.

Response. No change has been made. Under a program that does not make grants on a competitive basis, it generally is not necessary to establish a deadline for submission of applications. If a deadline is necessary to facilitate selection of applications for support, a deadline will be published. No deadline will be established without publication.

Other changes. Paragraph (b) has been amended to apply a more flexible deadline for receipt of State approvals. This change conforms to current Education Division practice.

§ 100a.154 **Effect of State approval; failure to approve.**

Comment. Two commenters suggested that the provision that prohibits a grant if a State does not approve an application on or before the deadline for State approval should be modified to allow for an appeal to the Education Division if the State disapproves or fails to approve the project.

Response. No change has been made. Under the programs subject to these

EDGAR provisions, the requirement for State approval is statutory and not subject to modification by regulations. Appeals are allowed only if specifically authorized under a program statute.

State Comment Procedures

§ 100a.155 Review procedure if State may comment on applications: purpose of §§ 100a.156–100a.158.

Comment. One commenter suggested that programs to which State review procedures apply be listed for the convenience of the reader.

Response. No change has been made. Programs that require an opportunity for the State to comment will specify in their program regulations that the opportunity for comment is required.

§ 100a.158 Deadlines for State comments.

Comment. One commenter suggested that the appropriate offical of the Education Division be required to publish a deadline in the **Federal Register** for receipt of State comments on applications, rather than having the option to publish or not to publish a deadline.

Response. No change has been made. The Education Division generally publishes a deadline for State comments under these programs. Occasionally, however, it may not be necessary or desirable to publish a deadline; therefore, the flexibility in this section has been retained.

Changes. Paragraph (c) has been revised to make it clear that a State's comments must be sent to the Education Division.

§ 100a.159 Effect of State comments or failure to comment.

Comment. One commenter suggested that an applicant should be required to provide the State with a reasonable period of time within which to make its comments. One of the commenters suggested that State comments be made within 30 days after the application is submitted.

Response. No change has been made. If State comments must be submitted to the Education Division by a deadline, the appropriate official of the Education Division, in the **Federal Register** notice, allows a reasonable period of time between State receipt of the application and the deadline for submission of comments to the Education Division. This period commonly is 30 days or more, but the precise period must be flexible to meet the needs for particular programs.

Comment. One commenter suggested that the word "considers" be defined in order to indicate more clearly what effect State comments have on an application.

Response. No change has been made. The appropriate official of the Education Division gives serious consideration to all comments that a State makes. It is not possible to define generally how this is done for all programs.

OMB Circular A–95 Clearinghouse Procedures.

§§ 100a.170–100a.173

Comment. One commenter suggested that the term "clearinghouse procedures" be defined.

Response. No change has been made. As § 100a.170(b) makes clear, the procedures referred to are those used by clearinghouses established in accordance with OMB Circular A–95.

Comment. One commenter suggested that the listing of programs subject to the requirements of OMB Circular A–95 should include a footnote indicating that the list is subject to change from time to time. The footnote should tell the reader where to find the current listing.

Response. No change has been made. The list in EDGAR will be updated and revised as necessary.

§ 100a.171 Notify the appropriate clearinghouses.

Comment. One commenter suggested that this section be deleted because the provisions are redundant or similar to additional requirements established by the clearinghouses.

Response. A change has been made. The section has been revised so that its provisions apply only if superseding requirements have not been established by the appropriate clearinghouses.

§ 100a.172 Applicant shall show compliance with A–95 procedures.

Comment. One commenter suggested that an applicant be required to include a statement with its application that all comments made by or through a clearinghouse have been considered before the application is submitted.

Response. A change has been made. The revised provision requires that the applicant include a statement that comments made by or through a clearinghouse have been considered before submission of the application to the Education Division. This statement is required by the provisions of OMB Circular A–95.

Comment. One commenter suggested that provisions be added requiring the Education Division to notify clearinghouse of major actions taken on applications submitted to them, as provided for in OMB Circular A–95.

Response. A change has been made. The Education Division complies with the requirements of the OMB Circular and there is no need to include provisions to that effect in EDGAR, which is limited to regulations that directly affect applicants for and recipients of funds from the Education Division.

Development of Curricula or Instructional Materials

§§ 100a.190–100a.192

Comment. Several commenters suggested that EDGAR implement Section 1248 of the Education Amendments of 1978 (Pub. L. 95–561), which amends Section 426 of the General Education Provisions Act. Section 426 requires certain procedures to encourage effective dissemination of curricula or instructional materials developed under contracts or grants.

Response. A change has been made. Sections 100a.190–100a.192 have been added to EDGAR to implement Section 426.

Subpart D—How Grants Are Made

Selection of New Projects

§ 100a.200 How applications for new grants are selected for funding.

Comment. One commenter suggested that each program be required to publish applicable EDGAR selection criteria and other provisions that affect the selection of an application.

Response. A change has been made. For the convenience of applicants, program regulations will include applicable EDGAR selection criteria and the weighting factors that apply to them. Appropriate conforming revisions have been made in §§ 100a.200 and 100a.201.

§ 100a.201 How to use the selection criteria.

Comment. Two commenters suggested that all programs be required to use weighted selection criteria, rather than some programs using weighted criteria and others using unweighted criteria.

Response. No change has been made. The question of whether selection criteria should be weighted or unweighted can most appropriately be resolved on the basis of individual program objectives.

Comment. One commenter suggested that EDGAR selection criteria should be given more than 30 percent of the total number of points allocated among several selection criteria.

Response. No change has been made. By assigning a minimum of 30 percent of all points to the EDGAR selection criteria, the regulations assure that each criterion will receive at least the degree of consideration that the EDGAR weighting factors specify. To assign more than 30 percent of a program's selection criteria points to EDGAR criteria might result in undesirable distortion of priorities which differ among programs. However, a program may increase the weight given to particular EDGAR criteria.

Changes. Section 100a.201 has been revised to reflect the fact that program regulations will repeat the EDGAR criteria, rather than merely referencing them.

§ *100a.202 Selection criterion—plan of operation.*

Comment. A commenter asked that EDGAR include a selection criterion that would provide up to five percent of a program's selection points for equitable participation of private school children.

Response. A change has been made. Under a program that requires participation of private school students, applications will be evaluated in part on the quality of the applicant's plan to provide that participation. Because this was not an explicit criterion in the proposed EDGAR, and because applications must soon be submitted under the affected programs, the new criterion will apply to grants made after October 1, 1980, but not to applications for grants in the current fiscal year. Addition of the criterion is appropriate, since under the affected programs the quality of opportunity for participation of private school students is an important factor in judging the overall quality of an application.

The quality of the opportunity for participation may be shown in many ways. The Commissioner expects that the exact nature of participation may vary widely among school districts. Because the views of local private school representatives may be of value in evaluating the plan of operation, applicants are encouraged to submit statements from these representatives covering such points as—

The success of efforts to involve private school representatives in the planning process;

The reasons for differences in program benefits provided to public and private school students; and

Evaluations of past participation by private school students in similar projects administered by the applicant.

Changes. A note has been added after this section to emphasize that the language regarding traditionally underrepresented groups does not mean that a grantee can or should include ineligible participants in its project.

§ *100a.203 Selection criterion—quality of key personnel.*

Comment. Several commenters said it is not possible to name the project director and other personnel at the time an application is submitted.

Response. No change has been made. Applicants may describe minimum qualifications when personnel to be employed have not yet been selected. This does not authorize omission of the name and qualifications of the principal investigator of a research project. If actual personnel are not names, the rating for this criterion will be based on the descriptions of qualifications provided in the application.

Comment. One commenter suggested deleting § 100a.203(b)(4) regarding the amount of time each key person plans to commit to the project.

Response. No change has been made. The qualifications of personnel are relevant only to the extent to which those personnel are available to the project; therefore, time commitments are a necessary consideration.

Comment. One commenter suggested that using "past experience" as the primary basis for determining the qualifications of key personnel constitutes a bias against young but otherwise highly qualified personnel.

Response. A change has been made. Section 100a.203(c) has been revised to provide that both experience and training will be considered to determine the qualifications of a person. The section also allows the applicant to include information to support other measures of personnel qualifications, in addition to experience and training.

Comment. One commenter suggested that applicants be required to give an assurance that project personnel will be hired through affirmative action employment procedures.

Response. No change has been made. Affirmative action procedures are required only to overcome the effects of past discrimination and are not necessarily required with respect to the personnel for a particular project.

Comment. Several commenters suggested deleting proposed § 100a.203(b)(3) from the final regulations. That provision dealt with the qualifications of project employees who are members of an applicant's governing body or who are related to members of the governing body or the project staff.

Response. A change has been made. Section 100a.203(b)(3) has been deleted, and paragraphs (4) and (5) have been redesignated as paragraphs (3) and (4), respectively. Section 100a.525 prohibits grantees from allowing certain conflicts of interest in project activities and is considered sufficient.

§ *100a.204 Selection criterion—budget and cost effectiveness.*

Comment. One commenter suggested that the section should be more specific with respect to the information that the application should contain on budget and cost effectiveness, possibly even setting support levels to be provided for each participant in a program.

Response. No change has been made. It is not possible to write requirements that would apply to all programs and yet be specific enough to provide useful guidance for individual programs. If specific requirements are needed, they will be in a program's regulations.

§ *100a.205 Section criterion—evaluation plan.*

Comment. One commenter suggested that limiting evaluation to "objective, quantifiable methods" is too restrictive in some cases.

Response. A change has been made. The provision has been revised to allow the use of evaluation methods that are appropriate for the project and requires that the methods be objective "to the extent possible." However, applicants will be expected to use objective methods unless the nature of a project makes it impractical to do so.

Selection Procedures

§ *100a.215 How the Education Division selects a new project: purpose of §§ 100a.216–110a.222.*

Comment. One commenter suggested that time limits be established for the Education Division to complete its procedures for review and selection or rejection of applications.

Response. No change has been made. The schedule for awarding grants necessarily varies from year to year, depending on congressional appropriations, new program statutes, and other factors that are not always within the control of the Education Division.

§ *100a.216 Returning an application to the applicant.*

Comment. One commenter suggested that a provision be added stipulating that an application be returned to the applicant if State approval is required but has not been obtained. Another commenter suggested that applications received after the deadline should also be returned.

Response. No change has been made. If State approval is required but is not obtained, the application would be returned under paragraph (b)(4) of this section, which provides that if a project cannot be funded—which would include failure to meet legal requirements, such as State approval or the deadline for submission—the application is returned.

Comment. One commenter suggested that an application that is returned under this section be accompanied by a copy of reviewer comments.

Response. No change has been made. This section provides for return of an application that cannot be considered for support. This means these applications are not reviewed, but are eliminated from the competition, and there are no reviewer comments about these applications. The reason for returning an application is explained when the application is returned by the Education Division.

Changes. Proposed § 100a.104(b)—regarding compliance with procedural rules—has been transferred to § 100a.216(a)(2). Proposed paragraphs (a)(2) and (3) have been renumbered as (a)(3) and (4).

§ *100a.217 How the Education Division selects applications for new grants.*

Comment. One commenter suggested that a provision be added to allow interested individuals to submit applications for jobs as review panelists.

Response. No change has been made. Methods of recruiting review panelists are concerns of the particular programs, which establish recruitment policies and procedures appropriate to the particular needs of the respective program. Individuals wishing to serve as review panelists for a particular program should write directly to the Education Division unit that administers the program.

Comment. Several commenters offered suggestions regarding the qualifications of the experts that review applications.

Response. No change has been made. The appropriate official of the Education Division uses experts whom the official considers qualified to review an application and to advise the official about it. The qualifications to perform these responsibilities differ widely among programs. A specific definition of expert might unnecessarily limit the official's ability to select appropriate individuals.

Comment. Two commenters suggested that the Education Division delete from EDGAR the prohibitions against a person serving as a member of a panel of experts if the person is an HEW employee engaged in the administration of the program or was involved in the administration of the program within the past year.

Response. No change has been made. Individuals involved in administration of the program are responsible for reviewing the applications after the group of experts has made its assessment. It would therefore not be appropriate for them to also serve as members of the group.

Comment. Two commenters suggested that if the rank ordering of projects is disregarded in the award of one or more grants, the appropriate official should provide a justification for doing so.

Response. No change has been made. Revised § 100a.218(b) requires that the Education Division inform an applicant why its application was not funded. This would include any necessary justification for changing the initial rank ordering of applications.

Comment. One commenter suggested that a provision should be added with regard to the effect on rank order selection of geographical distribution and similar factors.

Response. A change has been made. The change allows the appropriate official to consider any information relevant to any requirement that applies to the selection of applications for new grants. This could include priorities such as geographic distribution. Some programs do not use priorities in the application selection process but rely solely on evaluative selection criteria for this purpose.

Other changes.

1. Paragraph (a) of the proposed section has been deleted as redundant with paragraph (b). The remaining paragraphs have been redesignated accordingly.

2. Redesignated paragraph (d) has been revised to better reflect the procedures used by the Education Division to select applications for funding. The revised paragraph (d) includes material proposed as § 100a.218(a), (b), and (c).

§ *100a.218 Applications not selected for funding.*

Changes. This section has been amended by deleting the requirement for each unfunded application to be returned to the applicant.

§ *100a.219 Exceptions to the procedures under § 100a.217.*

Comment. Two commenters suggested that the word "mishandled" in paragraph (b)(3) of this section implies that an Education Division decision not to fund an application can be appealed and asked that the appeal process be specified.

Response. No change has been made. A determination that an application was "mishandled" is made solely by the appropriate official of the Education Division on the basis that an administrative error was made in the selection process. The provision does not imply that a decision not to fund a proposed project based on a low score (for example) can be formally appealed by an applicant. A formal appeal of discretionary judgments, such as the scoring of applications, is neither authorized nor established by this section nor by any other section of Part 100a.

Comment. One commenter suggested that an appeal procedure for unsuccessful applicants be added to the project selection procedures.

Response. No change has been made. It is not feasible to have a formal appeal procedure for the thousands of unsuccessful applicants who submit applications each year.

Comment. One commenter suggested that funding without competition should be made more restrictive and less open-ended.

Response. No change has been made. The provision is quite restrictive as currently written. It is limited to: (a) situations in which the objectives of the project could not be achieved if the more time-consuming procedure in § 100a.217 were used; (b) applications under the Joint Funding Simplification Act; or (c) administrative mishandling during the preceding competition that resulted in an application not being funded when it otherwise would have been. The procedures in § 100a.220 should insure that the situations described in (a) are not expanded inappropriately.

§ *100a.220 Procedures the Education Division uses under § 100a.219(a).*

Comment. One commenter suggested that the board to review an application being considered for funding without competition should include an LEA representative.

Response. No change has been made. The board's functions are to make the objective determinations specified in paragraphs (c) (1), (2), and (3) and to submit its findings to the appropriate official of the Education Division. The membership of the board is designed to allow expeditious handling of the application, and the addition of non-Federal personnel to the membership could lead to unacceptable delays in processing the application.

Changes. Paragraph (c)(2) has been revised to recognize that some programs have priorities or other requirements, in addition to selection criteria, that govern the selection of applications for funding.

Procedures To Make a Grant

§ *100a.235 The notification of grant award.*

Comment. One commenter suggested that the Education Division notify applicants when the project has been approved, in order that "applicants know where they stand" rather than wait until the amount of the award has been determined as a result of negotiations following original selection.

Response. No change has been made. An applicant is informed soon after selection of its application that the proposed project has been recommended for funding, subject to satisfactory agreement on the amount and other matters. The official notification of a grant award is made only if this agreement is reached. The notification of grant award is then issued, which officially establishes the amount of the grant and the legal conditions related to the transfer of funds. The notification of grants award is a legal document that confirms and formalizes matters that both the applicant and the Education Division have agreed to.

Comment. One commenter suggested that the notification of grant award should indicate the proposal or project title to help recipients identify the program to which the notification relates.

Response. No change has been made. The section allows the desired information to be included. It is not desirable to regulate the specific content matter to be included in all award notifications since needs may vary among programs.

Approval of Multiyear Projects

§ *100a.250 Project period can be up to 60 months.*

Comment. One commenter suggested that the maximum project period be less than 60 months in order to leave a maximum amount of funds available for competitive awards that are innovative or that are responsive to newly identified needs.

Response. No change has been made. The section allows each program to choose an appropriate maximum project period. If a program wishes to use a multi-year project period, any limits on the length of the project period will be established in the program's application notice. (See § 100a.101(a)(6).) Most multi-year projects are for a period of 36 months.

Changes. Proposed paragraph (a) and (b) have been combined. The reference to the usual project period of 12 months has been deleted since it was not intended as a restriction and could have been confusing.

§ *100a.253 Continuation of a multi-year project after the first budget period.*

Comment. Three commenters suggested that provisions should be added about the use of any funds that are left over at the end of the budget period.

Response. A change has been made. A new paragraph (c) provides that the amount of a continuation award is the total amount of funds that the appropriate official determines is needed for the new budget period minus any funds that remain available from the preceding budget period.

Comment. One commenter suggested that the requirement that a grantee must submit every required report before a continuation award is made should be waived under certain conditions. Another commenter suggested that the requirement be clarified as to exactly what reports are required.

Response. No change has been made. Submission of certain reports is a necessary condition to receiving a continuation award. The requirement covers any report that must be submitted before the date of the continuation award. If a grantee is uncertain about the reports that are due under a particular grant, the grantee should contact the Federal grants officer for that project.

Changes. A new paragraph (b) provides that priority for funding is given to continuation awards over new grants. This priority should serve to ensure consistent treatment of applications for continuation awards under all programs of the Education Division. If Congress appropriates sufficient funds, each application for a continuation award will be judged on the basis of the criteria in § 100a.253(a) and will not be subject to competition with other applications. Each application that meets the criteria will be funded before funds under the applicable program are used to make any new grants.

Miscellaneous

§ *100a.260 Allotments and reallotments.*

Comment. One commenter suggested that the reference to §§ 100b.230–100b.235 should be dropped and this section revised to say that reallotment of unneeded funds is done "according to statute."

Response. A change has been made to adopt the suggestion. Section 100a.260 contains the revision.

§ *100.261 Extension of a project period.*

Comment. One commenter suggested deletion of the requirement that a grantee seeking an extension must make that request at least 45 days before the end of the project period. The commenter explained that the provision implies that a failure to meet the requirement would preclude a desirable extension of the project period.

Response. No change has been made. The Education Division needs an adequate amount of time to review a request for extension.

Changes. A new paragraph (f) has been added to this section to specify that a project period extension is to be used "to carry out the activities in the approved application."

Subpart E—What Conditions Must Be Met by a Grantee

Nondiscrimination

§ *100a.500 Federal statutes and regulations on nondiscrimination.*

Comment. Several commenters suggested that clarification is needed as to how grantee compliance with Federal nondiscrimination statutes and regulations is to be demonstrated.

Response. No change has been made. Any necessary clarification of the statutes and regulations listed in this section is presently the responsibility of the Office for Civil Rights, HEW.

Project Staff

§ *100a.510 Use of a project director.*

Comment. A number of commenters suggested deleting this section in the belief that it requires a full-time project director; several other commenters objected to the director's being given authority to spend project funds; and one commenter suggested correcting the implication that some projects do not need directors.

Response. A change has been made. The phrase in paragraph (c) requiring that the project director have authority to spend project funds has been deleted. Whether the project director has spending authority may vary, depending on the policy of the applicant. The rest of the section has been left unchanged.

The provisions of this section apply only to a grantee that uses a project director to administer its project; the section does not require a project director. Not all projects need a salaried project director. To require one in all cases would be wasteful of program funds.

§ 100a.511 Waiver of requirement for a full-time project director.

Comment. Several commenters suggested that the waiver provision be deleted to eliminate unnecessary paperwork; one asked that the section be revised to eliminate any implication that EDGAR requires a full-time project director; and one asked that the waiver provision be retained to make an exception possible if particular projects or circumstances make a full-time director unnecessary.

Response. A change has been made. Paragraph (a) has been revised to make it clear that this section does not require a grantee to use a full-time project director. Rather, it authorizes the appropriate official of the Education Division to waive particular program regulations that do require a full-time director, and it establishes conditions for the waiver. The paperwork required has been kept to a minimum, consisting simply of a written request that shows that a waiver is appropriate.

§ 100a.515 Qualifications of project staff. [Proposed]

Comment. One commenter suggested that this section be deleted and left to State and local control as part of their regular personnel operations. One commenter suggested adding the requirement that members of the project staff have appropriate State certification.

Response. A Change has been made. The section has been deleted. Education Division concern about the qualifications of project staff will be resolved through the application requirements in §§ 100a.113 (for formula grant programs) or by § 100a.203 (for discretionary grant programs) and any resulting grant award, or through individual program requirements.

§ 100a.516 Inservice training for project staff. [Proposed]

Comment. Two commenters suggested that this section be revised to make it clear that grant funds may be used for any training that is necessary for project staff.

Response. A change has been made. The section has been deleted. If training of project staff is necessary, the project application or subsequent amendment will specify the conditions associated with the training, making it unnecessary to regulate those conditions in EDGAR.

§§ 100a.515–100a.519 Project staff.

Other changes. Proposed §§100a.517–100a.521 have been renumbered as §§ 100a.515–100a.519.

§ 100a.515 Use of consultants.

Comment. One commenter suggested that this section establish a maximum rate of pay for a consultant.

Response. No change has been made. The authority for a grantee to use its own general policies and practices when hiring a consultant should be sufficient to control the costs of consultant services.

Comment. One commenter suggested that the provision prohibiting the use of grant funds to pay a consultant, unless the project needs the consultant and cannot meet the need by hiring an employee, is too restrictive and counterproductive from the standpoint of cost-effectiveness and should, therefore, be revised or deleted.

Response. A change has been made. The word "hiring" has been changed to "using." This broadens the provision to apply to current employees as well as to those that grantee might hire. The purpose of the requirement is to prohibit the use of consultants if the grantee's employees can perform the same function, thus reducing the cost to the grant.

§ 100a.516 Compensation of consultants—employees of institutions of higher education.

Comment. Two commenters asked for clarification of the phrase "unusual circumstances" as a condition for paying consultant fees to an employee.

Response. No change has been made. The phrase is used in § 100a.516 to mean that grantees must be able to demonstrate that the circumstances involved are sufficiently unusual to justify payments that otherwise would be prohibited. To define the term more specifically could unnecessarily limit the types of circumstances that the Education Division might judge to be unusual.

Comment. One commenter suggested that the provisions allowing an institution of higher education to pay one or more of its employees consultant fees from grant funds should either be deleted or extended to other grantee organizations.

Response. No change has been made. This section does not give special privileges to institutions of higher education or to their employees, but actually restricts the conditions under which employees may be used as consultants. No change is necessary to enable other grantees to pay one or more employees consultant fees, subject to the provisions of § 100a.515, which apply to all grantees. Under § 100a.515 an employee would be able to act as a consultant only if the service is outside the scope of his or her employment contract.

Conflict of Interest

§ 100a.525 Conflict of interest: participation in a project.

Comment. Two commenters suggested that this section apply only to grantees that have no formal conflict of interest policy.

Response. No change has been made. The requirements in § 100a.525 are considered minimal. If a grantee's conflict of interest policies and practices are at least as restrictive as the requirements of this section, the grantee's policies can be applied. If the grantee's policies and practices are less restrictive, the requirements in this section are considered necessary to avoid the most common forms of conflict of interest.

Comment. One commenter suggested clarifying the prohibition against using a project position for "private gain" to make it clear that the intent is to prohibit "financial gain."

Response. A change has been made. Section 100a.525(b) has been revised to make the prohibition apply with respect to "private financial gain."

Allowable Costs

§ 100a.530 General cost principles.

Comment. One commenter suggested that a percentage of an administrative officer's salary should be allowable to satisfy matching requirements.

Response. No change has been made. If all or part of an administrative officer's salary is an allowable cost under terms of the grant, that amount of the salary could instead be claimed as part of a grantee's matching share.

Cross-reference.—See 45 CFR Part 74 Subpart C—Cost Sharing or Matching.

§ 100a.534 Foreign travel. [Proposed]

Comment. One commenter suggested that prior approval by the appropriate official of the Education Division should be required with respect to all travel using grant funds, not just foreign travel. Several commenters suggested that travel to and from Guam, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands should not be considered foreign travel. Other commenters said travel to and from Canada should not be considered foreign travel, and two commenters suggested that travel to and from Mexico should not be considered foreign travel. One commenter asked that clarification be provided as to what constitutes "advance approval."

Response. A change has been made. The section has been deleted. The cost principles for institutions of higher education, in Appendix D to 45 CFR Part 74, required prior approval for "travel outside of Canada and the United States and its territories and possessions." This is a general policy of the Federal Government contained in OMB Circular A-21, published in the **Federal Register** on March 6, 1979.

The circular's restriction does not apply to State or local governments or to other grantees of the Education Division. Despite this, the Education Division has in the past extended the restriction to all grantees. Given the concerns raised by the commenters, it has been decided to discontinue this general policy.

Unless otherwise provided in the cost principles appended to 45 CFR Part 74, imposed through a specific condition of a grant, or required by a program statute or regulation, "foreign travel" by grantee personnel will be treated as any other travel, unless an institution of higher education is the grantee. The Education Division considers the "advance approval" required by 45 CFR Part 74 to be satisfied if the travel is specified in an approved application.

The suggestion that all grantee travel be subject to prior approval by the Education Division has been rejected as unnecessarily burdensome.

Indirect Cost Rates

§ 100a.561 Approval of indirect cost rates.

Comment. One commenter suggested that this section be changed to reflect HEW approval of indirect cost rates.

Response. No change has been made. According to applicable law this is a function that cannot be delegated outside of the Education Division. Section 421A of the General Education Provisions Act states that the Commissioner of Education can only delegate his or her authority to an Office of Education employee. The Department of Health, Education, and Welfare performs a service function for the Education Division in computing indirect cost rates but final approval is determined by the Education Division. Whether this will be affected by the creation of the Department of Education is currently being studied.

Comment. One commenter suggested that this section require States to recognize indirect cost rates established by an institution's cognizant Federal auditor in accordance with OMB Circular No. A-88. (This circular requires that all Federal agencies recognize indirect cost rates established by the institution's cognizant Federal auditor. For each institution that receives Federal grants, a particular agency is designated as the institution's cognizant auditor. All Federal agencies recognize the rate set by the cognizant auditor. This policy prevents Federal agencies from using different indirect cost rates for the institution and simplifies the institution's financial relations with the Federal Government.)

Response. No change has been made. There is no statutory authority to require States to recognize federally established indirect cost rates.

Comment. One commenter suggested that paragraph (b) be revised to make it clear that States do not approve rates for State agencies that provide public education for elementary and secondary students even though these agencies are considered local educational agencies under the definition contained in § 100c.1.

Response. A change has been made. Paragraph (b) has been revised to provide that the term "local educational agency" does not apply to State agencies. This revision conforms the section to current practices in the Education Division.

§ 100a.562 Indirect cost rates for educational training projects.

Comment. One commenter suggested that State and local governments not be excluded from application of the limitations on indirect cost rates for educational training projects. Several other commenters suggested that the limitations be removed from institutions of higher education, hospitals, and nonprofit organizations and that they be allowed to have indirect cost rates established in accordance with OMB Circular No. A-21.

Response. No change has been made. The limitations apply to institutions of higher education, hospitals, and nonprofit organizations only. State and local government rates for all programs—other than those that prohibit the use of Federal funds to supplant non-Federal funds—are established in accordance with Appendix C to 45 CFR Part 74. The limitations on other grantees are necessary to ensure that grant funds are used primarily to support project activities, rather than for indirect costs. It has not been necessary to impose similar limitations on State and local governments, since their indirect cost rates generally are much lower than rates for other types of institutions. The limitations represent a longstanding policy that has been the subject of periodic reassessment. Allowing an unrestricted indirect cost rate would have a substantial adverse impact on the amount of training that could be supported with available funds, because of the typically large indirect cost rates of the institutions to which the limitations apply.

§ 100a.563 Restricted indirect cost rate—programs covered.

Comment. Two commenters said that although regulations for the developing institutions programs under title III of the Higher Education Act do not allow indirect cost rates to be charged to grant funds, this section allows these charges under that program.

Response. A change has been made to delete the program from coverage by § 100a.563 and to rely, instead, on the limitations in the program regulations.

Comment. One commenter suggested clarification of the language in this section with regard to Federal funds being used to supplant non-Federal funds.

Response. A change has been made. The section now provides that Federal funds are not to be used to supplant non-Federal funds. The language in the proposed regulations was an incorrect statement of the statutory provisions.

Comment. One commenter suggested clarification of whether or not a "grant award officer" of the Office of Education has the right to question and attempt to change an approved indirect cost rate.

Response. No change has been made. A grant award officer or a representative of a grant award officer may request clarification of an established rate, but no employee of the Education Division has the authority to increase or decrease a rate approved by the Education Division.

Other changes.

(1) Additional programs have been added to the list. However, the list is not necessarily exhaustive.

(2) A new paragraph (c) has been added to allow institutions other than States and local governments to use an eight percent indirect cost rate under these programs, unless the appropriate official of the Education Division determines that the "restricted" rate would be lower. Since many institutions of higher education and other organizations do not presently have a "restricted" rate, this provision can be used to substantially reduce their paperwork burden by allowing them to adopt a predetermined rate, rather than making a full submission to establish a "restricted" rate. The appropriate official retains authority to require affected institutions to use a lower rate if necessary to prevent supplanting.

§ *100a.564 Restricted indirect cost rate—formula.*

Comment. Three commenters suggested that the minus sign in the formula should be changed to a division sign.

Response. A change has been made to effect the suggested change. The minus sign was a typographical error.

Comment. One commenter suggested that the concept of restricted indirect costs is not equitable. The commenter said the formula is inconsistent with the cost principles in the Federal Procurement Regulations and with the Cost Accounting Board's Standard No. 402.

Response. No change has been made. The formula is necessary to remove those items included in the general indirect cost rate that would result in Federal funds supplanting non-Federal funds. The cost principles referred to by the commenter are subject to overriding statutory requirements, including those that prohibit supplanting.

§ *100a.565 Administrative charge.*

Comment. One commenter suggested that compensation for the chief administrative officer of the grantee and for his or her immediate staff be included in the term "administrative charge."

Response. No change has been made. The exclusions are necessary to avoid using Federal funds to supplant non-Federal funds.

§ *100a.566 Fixed charges.*

Comment. One commenter suggested that this section be changed to identify all current fringe benefits.

Response. A change has been made. As revised, the section includes unemployment compensation payments, health insurance payments, and "all similar costs normally considered to be employee fringe benefits."

§§ *100a.565, 100a.566, and 100a.567 Administrative charge, fixed charges, and other expenditures.*

Comment. One commenter expressed concern over the terms that are the subject of the cited sections. The commenter says the terms have broad or ambiguous meanings or require an expanded definition and that the final cost objective of each term may be classified as either a direct or indirect cost by a grantee.

Response. No change has been made. Each grantee must classify costs as either direct costs or indirect costs consistently in like circumstances.

§ *100a.567 Other expenditures.*

Changes. A qualification has been added to § 100a.567(a)(7) to allow project funds to be used for election expenses that result from elections required by a program statute. Since these expenses result from a program requirement, a grantee is allowed to include them in computing an indirect cost rate.

§ *100a.568 Using the restricted indirect cost rate.*

Changes. A conforming change regarding election expenses has been made in the formula in paragraph (a). See the preceding discussion under § 100a.567.

Coordination

§ *100a.580 Coordination with other activities.*

Comment. One commenter suggested that the activities with which coordination is required should be limited to those directed to similar target groups and geographic areas, rather than to all those having similar purposes.

Response. A change has been made. The additional qualifications have been added. The change is intended to ensure that compliance with the requirement is feasible for a grantee. Before the change, the section could have been read to require coordination with activities that a grantee would not reasonably have known about.

Other changes. The section has been amended to implement a statutory requirement for coordination under the Basic Skills Program, Title II, ESEA.

§ *100a.581 Methods of coordination.*

Changes. Two new paragraphs have been added. Paragraph (c) adds joint activities to activities that might be included in coordination, and paragraph (e) adds use of grant funds to increase the impact of funds provided under other programs. In addition, the opening phrase has been amended to make it clear that if coordination is appropriate, a grantee must use one or more of the methods listed in this section.

Evaluation

§ *100a.590 Evaluation by the grantee.*

Comment. Two commenters suggested that evaluation provisions should include requirements for using evaluation to improve a continuing project.

Response. No change has been made. The use to be made of a program evaluation normally would include improvements to a continuing project, but that use would not be possible in all cases.

Comment. One commenter suggested that annual evaluation may not be appropriate in all cases, and another commenter said evaluation requirements should be left to program regulations.

Response. No change has been made. If annual evaluation is not necessary under a particular program, the program regulations will provide for an exception to this section. However, evaluation is believed to be appropriate for determining the effectiveness of most projects. With respect to the second comment, program regulations—where appropriate—may provide more detail regarding a grantee's responsibility to evaluate its project.

Comment. Two commenters suggested that evaluation should focus on the specific target groups to which the activity is directed, rather than focusing on special groups that are not the particular targets of the activity.

Response. No change has been made. Paragraph (c) of this section already provides that the evaluation include an assessment of the effect of the project on those served by the project.

Changes. A new paragraph (c)(2) has been added to require that project evaluations include participating students who are enrolled in private schools, if the program statute requires that those students be provided an opportunity to participate.

§ *100a.591 Federal evaluation—cooperation by a grantee.*

Comment. One commenter suggested that the amount of funds that a grantee should be required to spend to cooperate with evaluations should be limited to the amount provided for that purpose by the grant.

Response. No change has been made. The suggested limitation on a grantee's obligation to cooperate with a Federal evaluation study is not feasible. Because most project grants do not include funds specifically designated for evaluation costs the proposed limitation could negate most requests for cooperation. This would be an unacceptable result, inasmuch as grantee cooperation is necessary in order for the Education Division to carry out statutorily required evaluations. Nevertheless, the Education Division recognizes that cooperation could be, in unusual circumstances, a burden on a grantee. In these cases, § 100a.592 (or § 100b.592) can be used by the Education Division to provide compensating relief. In practice, the Education Division generally plans and conducts national evaluations in a manner that minimizes the burden placed on grantees.

Comment. One commenter suggested that the required cooperation be limited to evaluations required by statute or by an appropriate official of the Education Division.

Response. No change has been made. Grantee cooperation is required only with evaluations that are authorized by statute.

Construction

§ *100a.601 Applicant's assessment of environmental impact.*

Comment. One commenter suggested that an applicant's assessment of a project's environmental impact should be included with the application rather than being sent separately to the HEW regional office.

Response. A change has been made. Environmental impact statements are to be provided with the application in accordance with application submission requirements. The change is intended to simplify the procedures to apply for Education Division grants.

§ *100a.602 Preservation of historic sites must be described in the application.*

Changes. This section was revised to reflect the expanded coverage of 45 CFR Part 800. These regulations of the Advisory Council on Historic Preservation now cover property that is *eligible* for inclusion in the National Register of Historic Places. This protection of eligible property is in addition to the protection already afforded to property now on the National Register.

Publication and Copyrights

§ *100a.620 General conditions on publication.*

Comment. Several commenters suggested deleting the requirement that published project materials avoid race stereotype or sex bias on grounds that the prohibition violates Section 432 of GEPA and infringes guarantees under the First Amendment of the Constitution. They also objected to the seemingly broad scope of the requirement, arguing that there would be unwarranted restrictions on the content of these materials. One commenter suggested providing an exception for materials in which the presentation of those stereotypes and biases are necessary to the purpose of the materials.

Response. A change has been made. The requirement has been deleted. Given the uncertain scope of the requirement, a regulation on this subject will not be adopted at this time. The Secretary of Education has decided to study this issue, and therefore the provision will not be adopted at this time. If it is determined at a later date that a regulation is appropriate, further public comment will be requested in a notice of proposed rulemaking published in the **Federal Register**. However, grantees are expected to be sensitive to the necessity of avoiding inappropriate biases and stereotypes in materials developed with Federal funds.

§ *100a.621 Copyright policies for grantees and contractors.*

Comment. One commenter suggested that limitations to copyright that are specified in the Copyright Law (Pub. L. 94–553) should be incorporated into Part 100a.

Response. No change has been made. EDGAR governs the circumstances under which a grantee may apply for a copyright and the grantee's use of royalty income (by reference to 45 CFR Part 74). However, EDGAR does not include any regulations that implement or interpret the Copyright Law. Any regulations under that law would be issued on a Government-wide basis, not by the Education Division.

Comment. One commenter suggested that there be some limitations on a grantee's right to copyright materials.

Response. No change has been made. The purpose of allowing a grantee the unrestricted right to copyright materials is to encourage the grantee to disseminate the materials more widely. It is the intention of the regulations that grantees who achieve successful dissemination should benefit from owning the copyright to the materials. Further, the change from past practice will reduce burdensome paperwork, both for grantees and for the Federal Government.

§ *100a.622 Definition of "project materials."*

Changes. This section has been revised to make the definition of "project materials" apply to §§ 100a.620 and 100a.621, rather than only to § 100a.620, as proposed in the NPRM.

Other Requirements for Certain Projects

§ *100a.650 Participation of students enrolled in private schools.*

Comment. One commenter suggested that this section be revised to emphasize that eligible private school children must be given a genuine opportunity to participate if the authorizing statute provides for their participation.

Response. A change has been made. The change provides the suggested emphasis and conforms to similar language used in § 100b.651.

Comment. One commenter suggested that if public school systems have no authority to obtain necessary data from private schools, the public school systems should not be held responsible for the compliance of private schools with the nondiscrimination requirements of Title VI of the Civil Rights Act (CRA) in connection with the participation in Federal programs of children enrolled in private schools.

Response. No change has been made. Sections 100b.651–100b.662 contain rules for providing opportunities for students enrolled in private schools to participate in federally assisted programs. The rules include a number of responsibilities that applicants, grantees, and subgrantees have with respect to providing those opportunities for participation.

In fulfilling these responsibilities, an applicant, grantee, or subgrantee may need certain information about programs and services available to students enrolled in private schools and about the needs of these students. The applicant, grantee, or subgrantee is obligated to seek information that is necessary to fulfill these responsibilities. The information may be provided by representatives of students enrolled in private schools, by the students themselves, or by other knowledgable and responsible individuals or organizations.

Nothing in these regulations requires an applicant, grantee, or subgrantee to undertake responsibilities that cannot properly be fulfilled because of lack of necessary information from or lack of participation by representatives of private school students. However, the applicant, grantee, or subgrantee is expected to make appropriate efforts to obtain the information and participation needed to provide federally assisted program services to eligible students.

The Education Division expects that information and appropriate participation will be provided by representatives of students enrolled in private schools, by the students themselves, or by other knowledgeable and responsible individuals and organizations.

These regulations do not govern compliance with Title VI of the Civil Rights Act and, therefore, do not address the commenter's concern with that aspect of private school students' participation.

Cross-reference.—§ 100a.500 Federal statutes and regulations on non-discrimination.

Other changes. Proposed § 100a.680 has been renumbered as § 100a.650.

§ *100a.681 Indian Self-determination and Education Assistance Act. (Proposed)*

Changes. This section has been deleted. Because of the varying requirements under the programs affected, it is not possible to provide consolidated regulations on this subject.

Changes. Proposed §§ 100a.682–100a.685 have been renumbered as §§ 100a.681–100a.684.

§ *100a.681 Protection of human research subjects.*

Changes 1. A cross reference to 45 CFR Part 46 has been added to this section. Part 46 contains the HEW regulations covering the protection of human research subjects. A proposed rule that revises these regulations was published in the **Federal Register** on August 14, 1979 (44 FR 47688). The proposed rule states an exception to the coverage of that part for certain kinds of educational research. Most projects funded by the Education Division will be exempt from the Part 46 institutional review board requirements. However, the EDGAR section affirms a basic policy of the Education Division—a grantee must protect human research subjects from injury.

2. The section has been revised by substituting the term "social injury" for "sociological harm." This change makes the provision consistent with terminology used in 45 CFR Part 46. Another revision makes it clear that the requirement only extends to injuries that might result from the project.

3. Proposed § 100a.682 has been renumbered as § 100a.681.

Subpart F—What Are the Administrative Responsibilities of a Grantee?

General Administrative Responsibilities

§ *100a.701 The grantee administers or supervises the project.*

Comment. One commenter suggested that the prohibition against a grantee transferring responsibility to others be clarified.

Response. A change as been made. Paragraph (b) has been deleted because paragraph (a), which requires direct administration, accomplishes the same result. It should be noted that the requirement that a grantee directly administer or supervise administration of project does not preclude obtaining particular services, materials, or other needs by contract. However, it does preclude a grantee from being a "conduit" for the grant funds by passing on its responsibility for the project to another party.

§ *100a.702 Fiscal control and fund accounting procedures.*

Comment. One commenter suggested that this section specifically require a double entry system of accounting.

Response. No change has been made. The requirement that the control and accounting systems used by the grantee result in "proper disbursement of and accounting for Federal funds" is believed to be adequate without compelling grantees who do not use double entry accounting to institute that system for handling Federal funds.

§ *100a.707 When obligations are made.*

Comment. One commenter suggested that this section should make clear that a ruling by the Internal Revenue Service that a personal service contractor is actually an employee rather than a contractor, does not affect the date when the Education Division considers the obligation to have been made.

Response. No change has been made. If the personal services contract was entered into legally, and in good faith that the arrangement was a contract and not an employee-employer relationship, the provisions of paragraph (c) would be considered binding by the Education Division even if the Internal Revenue Service ruled, for its own purposes, that the relationship is that of an employer and an employee.

Comment. One commenter suggested that personal services by a contractor should be considered to constitute obligations at the time the services are performed, rather than on the date the grantee makes a binding written commitment for the personal services.

Response. No change has been made. To achieve the purposes of the project, performance under a personal services contract may be necessary after the end of the project period. The Education Division may wish to reimburse grantees in these circumstances, and therefore has not adopted the comment.

Note.—Under § 100a.707(b), the phrase "personal services by an employee of a grantee" refers only to services that are within the scope of the employment agreement.

§ *100a.708 Prohibition of subgrants.*

Comment. Three commenters suggested that the prohibition against subgrants, unless specifically authorized by statute, should be made less restrictive to allow a State educational agency to make subgrants from Federal grant funds it receives.

Response. No change has been made. Any grants made to State educational agencies under Part 100a are awarded on a competitive basis. (All State formula grant programs are covered under Part 100b of EDGAR.) The purpose of a grant—under a program covered by Part 100a—is to help the recipient carry out its own project. No program listed in § 100a.1 provides Federal funds that are intended for use by recipients other than those directly awarded the grants. Where Congress intended to authorize States to award subgrants, provision is made in the program statute. Those programs are covered under Part 100b.

Comment. Three commenters suggested that the section should be revised to allow grantees to enter into contracts using grant funds.

Response. A change has been made. A new subsection (b) has been added to make clear that a grantee may enter into contracts using grant funds awarded under Part 100a. There was no intent under the proposed section to prohibit contracting under a grant.

Reports

§ *100a.720 Financial and performance reports.*

Comment. One commenter suggested that nonprofit grantees should be required to submit financial and performance reports more frequently than annually, primarily because those organizations frequently have deficient financial accounting systems.

Response. No change has been made. Section 100a.720(c) authorizes the appropriate official of the Education Division to require a grantee to report more frequently than annually under certain circumstances, including those referred to by the commenter. However, it is better to make these exceptions case by case, in order to avoid an undue paperwork burden on other grantees.

Comment. Two commenters suggested that financial and performance reports should be required only once a year from grantees of the National Institute of Education, rather than quarterly as the proposed section provided.

Response. A change has been made. Financial reports to NIE are required annually, but the Director of NIE is authorized to require performance reports more often than annually. The National Institute of Education believes that because of the nature of research projects, proper monitoring sometimes requires performance reports more often than annually.

§ *100a.721 Reports under the Joint Funding Simplification Act.*

Changes. This section has been added to EDGAR to allow the appropriate official of the Education Division, in cooperation with other Federal or State agencies involved in a grant, to determine the frequency of financial and performance reports necessary for a grant under the Joint Funding Simplification Act.

Records

§ *100a.730 Records related to grant funds.*

Comment. One commenter suggested that the general requirement to keep "records to facilitate an effective audit" is too broad and should be revised to require that the funding agency specify the records that are to be kept to facilitate an audit.

Response. No change has been made. This is a statutory requirement established by Section 437 of the General Education Provisions Act. It is not possible to write general regulations that specify every type of record that should be kept for audit purposes, since programs and projects vary so widely. However, the Education Division will provide technical assistance, at the request of a grantee, regarding appropriate recordkeeping policies.

§ *100a.731 Records related to compliance.*

Comment. Several commenters said the requirement that a grantee "keep records to show its compliance with Federal statutes and regulations that apply to the grant" is too broad and might require grantees to generate a wide range of records that are only peripherally related to the grant. Commenters suggested that recordkeeping requirements be limited to those specified by Subpart D of 45 CFR Part 74, in accordance with OMB Circular A-110.

Response. A change has been made. The section now refers to "program requirements" rather than to "Federal statutes and regulations." This change is intended to make it clear that the section does not require a grantee to keep records on matters not directly associated with the purposes and uses of the grant. However, the grantee must keep records that enable it to show that it has met applicable program requirements.

§ *100a.734 Record retention period.*

Comment. Two comments suggested that the requirement to retain records for five years is excessive and should be reduced to two or three years.

Response. No change has been made. The five-year retention period is requird by Section 437(a) of the General Education Provisions Act.

Comment. One commenter suggested clarification of the phrase "completion of the activity" to make the beginning of the retention period more definite.

Response. A change has been made. A cross-reference is made to 45 CFR 74.22—Starting date of retention period.

Other changes. This section has been simplified to say that unless a longer period is required under 45 CFR Part 74, a grantee must retain records for five years. The change is intended to eliminate confusion about the applicability of requirements in 45 CFR Part 74. The 45 CFR Part 74 provisions requiring a three-year record retention period are superseded by the statutory requirements of Section 437 of GEPA, on which this section is based, to the extent that Section 437 would require a longer retention period.

Privacy

§ *100a.741 Protection of students' privacy in research and testing.*

Changes. This section has been amended by incorporating the statutory provisions referenced in the proposed regulations.

Data Collection by a Grantee

§§ *100a.750–100a.754.*

Changes. These sections have been amended to incorporate the latest interpretations and procedures relating to the Federal Education Data Acquisition Council (FEDAC) and the Office of Management and Budget (OMB). References to OMB review of some data collection instruments are included because of the occasional cases in which the data collection activity does not come under the FEDAC procedures.

Subpart G—What Procedures Does the Education Division Use To Get Compliance?

§ *100a.901 Suspension and termination.*

Changes. This section has been amended to reflect the fact that the Education Appeal Board, rather than the Departmental Grant Appeals Board, will have jurisdiction over suspension and termination proceedings under any of the Office of Education programs listed in the table following § 100a.1.

§ *100a.903 Effective date of termination.*

Comment. One commenter suggested that termination be made effective on delivery to the grantee of the notice of termination or on a date specified by the Education Division in the notice, whichever is later.

Response. A change has been made. The section has been rewritten to provide that termination is effective on the latest of (a) the date of delivery of the termination notice to the grantee, (b) the date specified in the termination notice, or (c) the date a final decision is made by the Commissioner under Part 100d (Education Appeal Board Procedures) or by the Departmental Grant Appeals Board under 45 CFR 16.10. These changes provide needed flexibility in setting termination dates and recognize the jurisdiction of the Education Appeal Board over terminations under Office of Education programs.

PART 100b—STATE-ADMINISTERED PROGRAMS

General Comments

Comment. One commenter asked for a clarification of how this part relates to public junior or community colleges, and suggested that all regulations that apply to public junior or community colleges be contained in separate sections.

Response. No change has been made. If a limited group of agencies is intended, a limiting term (such as "local educational agency") is used, and the regulations apply only to members of that group. If no limitation is intended, a general term (such as "applicant" or "subgrantee") is used.

Cross-reference.—See 45 CFR Part 100c—Definitions.

Subpart A—General

Regulations That Apply to State-Administered Programs

§ *100b.1 Programs to which Part 100b applies.*

Changes. Various technical corrections have been made in the list of programs subject to Part 100b.

Eligibility for a Grant of Subgrant

§ *100b.50 Statutes determine eligibility and whether subgrants are made.*

Changes. Proposed § 100b.4 has been renumbered as § 100b.50 to conform more closely to the numbering in Part 100a. This and similar numbering changes should make it easier for readers to use Parts 100a and 100b.

§ *100b.51 A State distributes funds by formula or competition.*

Comment. One commenter suggested that this section should be changed to recognize that there may be programs that permit the State to make subgrants either by formula or by competition at the State's option.

Response. A change has been made to adopt the substance of this suggestion.

Comment. One commenter questioned the clarity of the term "objective formula" as used in subparagraph (a).

Response. A change has been made. The adjective "objective" has been deleted. The distinction being made is between programs in which a State has little discretion in selecting applications or establishing the amount of a subgrant because there is a statutorily required formula for intra-State distribution of the program funds, and programs in which the State has substantial discretion in these matters.

Other changes. Proposed § 100b.5 has been renumbered as § 100b.51.

Subpart B—How a State Applies for a Grant

State Plans and Applications

§ 100b.101 The general State application.

Comment. One commenter asked why this section was limited to local educational agencies (LEAs) and why no mention was made of public junior or community colleges.

Response. No change has been made. This section implements Section 435 of the General Education Provisions Act, which applies only to programs under which SEAs make subgrants to LEAs. Since public junior or community colleges do not provide elementary or secondary education, they are not covered under the usual statutory definition of LEA. The State Vocational Education Program, which does include them (see the definition of "local educational agency" in Part 100c), is not subject to the State general application requirement. The program has its own general application required by the program statute.

Comment. One commenter suggested that the assurance that "each program will be administered in accordance with all applicable statutes, regulations, program plans, and applications" includes civil rights and other similar statutes and regulations. Therefore, these documents should not have to be submitted with every plan or application.

Response. No change has been made. Civil rights assurances are required by the civil rights regulations referenced in § 100b.500. Amendments to those regulations are outside the scope of EDGAR.

Comment. One commenter suggested that procedures be established, including formal notification in writing, to inform members of traditionally underrepresented groups regarding consultation in the planning process.

Response. No change has been made. Because program statutes vary widely regarding participation of various groups in the planning process, it is not feasible to have a general rule that would apply to all of the programs listed in § 100b.1.

Changes. This section has been amended to incorporate statutory provisions that were referenced in the proposed regulations

§ 100b.102 Definition of "State plan" for Part 100b.

Comment. One commenter suggested that the fact that § 100b.102 includes programs involving public junior or community colleges does not meet the problem that § 100b.101 does not include those institutions.

Response. No change has been made. The general application, which covers only programs under which SEAs make subgrants to LEAs, does not apply to all of the programs listed in § 100b.1. Under some of those programs, no subgrants are authorized. Under others, LEAs are not eligible for subgrants. The definition of "State plan" in § 100b.101 is simply used as a term of convenience to refer to the various documents—not including the State general application—that are subject to various EDGAR requirements, such as the requirement for certification under § 100b.105. Therefore, the State plan or application for each program is referenced in § 100b.101.

Comment. One commenter suggested that the Migant Education Program be listed in § 100b.102.

Response. A change has been made. This suggestion has been adopted. The State application under the migrant program is subject to many of the same rules as the other "State plans" listed in this section.

Other changes. Various corrections have been made to the list of documents covered by this section.

§ 100b.103 Three-year State plan

Comment. One commenter suggested that because paragraph (b) permits the Commissioner to establish a staggered schedule for the submission of three-year State plans, the Commissioner should not ask for the submission of a State plan more often than once every three years.

Response. No change has been made. The establishment of three-year State plans is at the discretion of the Commissioner. The establishment of a staggered schedule would, in the first years, involve the submission of State plans by some States at less than a three-year interval. If there is no objection to the staggered schedule, the Commissioner must be able to take the necessary steps to begin it.

Comment. Several commenters suggested that three-year State plans should not be permitted or, alternatively, that the regulations should require annual amendment of three-year State plans.

Response. No change has been made. The Commissioner believes that making each State plan effective for three years in desirable to reduce paperwork and to improve the quality of each State plan. To require annual updating would largely defeat the advantages of three-year State plans. The Commissioner does, however, retain the right to require an amendment if he or she determines that one is essential. Further, this determination may be made on a case by-case basis or in individual program regulations.

Cross-reference.—See § 100b.140 Amendments to a State plan.

Also, this section does not prevent the Commissioner from obtaining necessary information through reports from the States, rather than in the State plans. Amendments to State plans should be submitted as necessary, not on a predetermined schedule that ignores the need for amendment.

Changes. 1. Certain documents required under Title I of the Vocational Education Act, the Library Services and Construction Act, and Sections 141–143 of ESEA are specifically exempted from application of this section. These exemptions are necessary to accommodate the annual need for these documents.

2. States are given the option of submitting annual plans under the Vocational Education Program, rather than three-year plans. This change is necessary to avoid undue burden on some States that are finding it more convenient to submit annual plans under this program.

§ 100b.104 A State shall include certain certifications in its State plan.

Comment. One commenter suggested that the certifications required by this section be submitted as a part of the State's general application under § 100b.101.

Response. No change has been made. These are two different kinds of statements. The general application includes statutory assurances that remain in effect from year to year but does not contain the specific programmatic information in the State plans that makes the certification necessary.

Comment. One commenter suggested that paragraphs (3), (4), and (5) are redundant and should be dropped.

Response. No change has been made. These paragraphs are necessary to assure the Commissioner that State law will not conflict with implementation of the State plan.

Comment. One commenter suggested that each State should hold a public hearing on each State plan, particularly now that State plans may cover three years.

Response. No change has been made. Under Section 435 of GEPA, public hearings on State plans are required only for programs administered by State educational agencies, under which subgrants are made to LEAs, (see § 100b.101), or programs that have specific requirements for public hearings in the authorizing statutes (such as the State Vocational Education Program (see 45 CFR Part 104)). To extend this requirement to other State-administered programs would put a burden on States and might go beyond the Education Division's legislative authority.

Cross-reference.—See § 100b.101 The general State application.

§ *100b.105 The Governor has 45 days to comment on the State Plan.*

Comment. Two commenters suggested that a State be allowed to submit its State plan to the Commissioner at the same time it submits it to the Governor under OMB Circular A–95.

Response. No change has been made. Circular A–95 provides for the Governor's comments or a statement that no comments were received to be submitted with the State plan. A State may send an advance copy of its State plan to the Commissioner to review in draft form. However, the Commissioner cannot approve the State plan until the requirements of this section have been met.

Comment. One commenter objected to the apparent requirement that the 45-day comment period for the Governor and the 60-day publication period required by Section 435(b)(7) (B) of the General Education Provisions Act (now in § 100b.101(e)(7)(ii)) must run consecutively, which would substantially delay submission of State plans.

Response. No change has been made. The Commissioner interprets the statute and the circular as permitting the two periods to run concurrently.

§ *100b.106 State plan is public information.*

Comment. One commenter suggested that it should be possible to exclude personally identifiable data from the materials that a State must make available for public inspection.

Response. A change has been made. Paragraph (a)(4) of the proposed rules has been deleted. That paragraph would have required the State to make available to the public "all documents that a State uses to administer or operate a program." The remaining documents subject to this section, such as State plans, do not contain personnally identifiable information that if released would violate an individual's privacy. States would still be expected to make available at least some of the documents that would have been covered under proposed paragraph (a)(4), but may delete confidential information if appropriate.

Comment. One commenter suggested that "available for public inspection" should be interpreted to mean that a member of the public may look at or review documents under the supervision of State personnel or may purchase copies at a reasonable cost.

Response. No change has been made. Each State may establish reasonable rules and procedures for public access. Detailed requirements established by the Commissioner should not be necessary.

Comment. One commenter suggested that correspondence should not be considered public information. The commenter also asked whether "all documents" includes forms.

Response. A change has been made. As noted in the response above, paragraph (a)(4) of the proposed section has been deleted. In general, if a State uses a form in a Federal program, it should make that form available on request. States are also expected to make non-confidential correspondence available, but this section would not require release unless the correspondence was related to the State plan (see § 100a.106(a)).

Comment. One commenter suggested procedures permitting interested parties to notify the State of their interest in inspecting identified State plans. The State would then inform the interested parties, in writing, of the time and place a State plan could be inspected. Further, copies of a State plan would have to be sent by the State to those parties requesting it.

Response. No change has been made. A State may establish reasonable procedures of its own, but the Commissioner believes that detailed Federal procedures to apply to all States are unnecessary and would be overly burdensome.

Other changes. Approved subgrant applications have been added to the list of materials that must be made available for public inspection.

Amendments

§ *100b.140 Amendments to a State plan.*

Comment. One commenter objected to giving the Commissioner the authority to require an amendment to a State plan. The commenter said that if the Commissioner approves a State plan, that approval should last through the life of the plan.

Response. No change has been made. The regulations indicate that the Commissioner may require an amendment if it is determined to be essential. This is a statutory requirement from Section 430(a) of GEPA. An example of a situation which would make an amendment essential is a change in the program statute or a change in State law or procedures that has a significant effect on the State's administration of the plan. The Commissioner and the State cannot properly administer a program under procedures that have been changed by a new statute or under other circumstances that would make an amendment to the plan essential.

Comment. A commenter suggested that a State should not have to amend its State plan if a change in administration or operation is still clearly in compliance with the law and the regulations. A description of that type of changes could be made in an appendix to an annual report.

Response. No change has been made. An amendment is required only if a change is significant and relevant. If the change in administration or operation alters the nature of the program or program activities so that the program is no longer what was originally approved by the Commissioner, the State needs the Commissioner's explicit approval to operate under the new policy or procedure. An amendment is the procedure to obtain that approval.

§ *100b.141 An amendment requires the same procedures as the document being amended.*

Comment. Several commenters suggested that an amendment should not have to go through the same procedures as the original document. They suggested that many amendments are merely technical in nature and that the broad considerations treated in the clearance process are not necessary for amendments. One commenter suggested that a public hearing not be required if the amendment is minor.

Response. No change has been made. If an amendment to a State plan is required under § 100b.140, it is appropriate for the amendment to be subject to review by the same organizational units, officials, or groups that were required to review the original plan or other document before it was submitted to the Education Division. The same would be true for other formal documents the State must submit under a program. Under the provisions of § 100b.140, minor or technical changes that are not significant may not require formal amendment of the State plan or other document.

Subpart C—How a Grant Is Made to a State

Approval or Disapproval by the State

§ *100b.202 Opportunity for a hearing before a State plan is disapproved.*

Comment. One commenter suggested that a State should be entitled to a hearing within 60 days after disapproval of its State plan is received and that the issue should be resolved within an additional 60 days.

Response. No change has been made. Disapproval of a State plan is a drastic step that would only be used as a last resort. Since the Commissioner does not expect to have to disapprove any State plans, procedures for disapproval would be developed, if necessary, for each case. The Commissioner would, of course, provide the State with an expeditious hearing and final decision if disapproval were to become necessary.

§ *100b.235 The notification of grant award.*

Comment. One commenter suggested that the Commissioner notify all States of the approval of a grant application by March 1 preceding the fiscal year in which the grant award is to be made.

Response. No change has been made. Early approval is very desirable, but it would depend on the enactment of appropriation acts, the State's early submission of plans, and other factors not under control of the Commissioner. However, the Office of Education continually works with the States to get earlier approval of State plans every year. Also, the implementation of the three-year State plan may make it possible to accomplish the commenter's purpose, at least in the second and third years of those plans, since there will not be a new approval process to go through.

Changes. Proposed § 100b.203 has been renumbered as § 100b.235.

Allotments and Reallotments of Grant Funds

§ *100b.260 Allotments are made under program statute.*

Comment. One commenter suggested that the regulations describe the manner in which a State's need will be determined for reallotment purposes. Another commenter suggested that the State be given an opportunity to expend funds before the Commissioner withdraws them, and one asked if State administrative funds might be withdrawn, as well as local program funds.

Response. A change has been made. Proposed § 100b.230 has been renumbered as § 100b.260 and revised to provide that any reallotment of funds by the Commissioner is made in accordance with the authorizing statute. Proposed §§ 100b.231, 100b.232, 100b.233, and 100b.235 have been deleted. Proposed § 100b.234 has been renumbered as § 100b.261 and provides that reallotted funds are part of the grant of the State that receives the reallotted funds.

The proposed regulations being eliminated include those relative to establishing a State's need for reallotted funds. Because reallotment is a rare occurrence, detailed regulations in EDGAR are not necessary.

If the State has no need for administrative funds, and if it is not authorized or is unable to use them as program funds, the Commissioner may reallot them.

Subpart D—How To Apply to the State for a Subgrant

§ *100b.300 Contact the State for procedures to follow.*

Comment. Two commenters suggested that a provision be added to Part 100b that would authorize State educational agencies (SEAs) to approve multi-year applications under which annual continuation of funding would be simpler than under procedures for annual applications. The commenter specifically suggested that SEAs be authorized to adopt continuation procedures similar to those in §§ 100a.117 and 100a.118. Another commenter raised the same issue in the form of a question about State authority to approve multi-year applications.

Response. No change has been made. If the authorizing statute or regulations for a program do not prohibit or otherwise preclude approval of multi-year applications, an SEA is free to adopt these practices. States currently use multi-year application procedures in administering programs authorized under Title IV of the Elementary and Secondary Education Act. If a State chooses to use this kind of system, funding for activities after the first year of a multi-year project must be made subject to the availability of funds.

§ *100b.301 Local educational agency general application.*

Comment. One commenter suggested that the term "general application" is confusing and that the term "statement of assurances" should be used instead.

Response. No change has been made. The term "general application" is the term used in the statute; i.e., Section 436 of GEPA. It is probably less confusing to use terminology that is consistent with the Act.

Changes. This section has been amended by incorporating the statutory material referenced in the proposed rules.

§ *100b.302 The notice to the subgrantee.*

Comment. One commenter asked if the State must send the subgrantee a copy of the applicable statute and regulations along with the subgrant award document.

Response. No change has been made. A State is not required to provide the subgrantee a copy of the applicable statute and regulations but is encouraged to do so. The State would be expected to provide a copy on request. Distribution of pertinent program requirements is a general administrative duty of the State.

Cross-reference.—See §§ 100b.770–100b.772—Administrative duties of the State.

§ *100b.303 Joint applications and projects.*

Comment. Several commenters suggested that it is inefficient and wasteful for a number of subgrantees to combine their subgrants in order to conduct a joint project if they must maintain a separate accounts for the funds each contributes. The commenters suggested that it would be more efficient for one subgrantee to serve as fiscal agent for all the subgrantees and then treat the combined subgrants as a single account.

Response. A change has been made. This section provides a method for both applying for and administering a joint project with one account. The method requires submission of a single joint application if several applicants apply for one combined subgrant.

Under a program in which subgrant amounts are entitlements of the individual subgrantees and must be used for particular purposes, it is necessary for each subgrantee to remain separately accountable for the use of the funds it receives. This would not prevent a State agency—under a program that gives the agency discretion to select subgrantees—from allowing eligible applicants to apply as a consortium under procedures like those described in §§ 100a.127–100a.129. In such a case, there would only be one subgrantee that would be accountable for all subgrant funds. The other participants would be legally responsible for the funds they receive to carry out their assigned parts of the project.

§ *100b.304 Subgrantee shall make subgrant application available to the public.*

Comment. One commenter suggested that this section of EDGAR take precedence over 45 CFR 121a.234 and 45 CFR 121a.280 of the regulations for the Federal education of handicapped children program, which the commenter considered more restrictive.

Response. A change has been made. Section 100b.304 has been revised to require that a subgrantee shall make available to the public any application, evaluation, periodic program plan, or report relating to a program. Although Section 436 applies only to local educational agencies, the policy it expresses is extended to all subgrantees by these regulations. 45 CFR 121a.234 of the handicapped program regulations has been revoked by the revisions published with this document. The regulations in 45 CFR 121a.280 relate to public hearings by State educational agencies on State plans. This section of EDGAR does not deal with that matter.

§ *100b.305 Amendments to applications.*

Comment. One commenter suggested that the words "unless the SEA deems otherwise" be added.

Response. A change has been made. This section has been revised to require that only significant amendments to subgrantee applications require the same procedures as the application itself. The purpose of the change is to avoid for minor changes the necessity for formal amendment of the application. Procedures regarding minor changes are left to the discretion of the State.

Subpart E—How a Subgrant Is Made to an Applicant

§ *100b.400 State procedures for reviewing an application*

Comment. One commenter suggested that the requirement in paragraph (b) that a State must approve an application does not take into account a situation in a discretionary program in which there are insufficient funds. Another commenter suggested that the requirement does not provide for situations in which a State is either prohibited from or required to establish funding priorities.

Response. A change has been made. Titles have been added to make it clear that paragraph (b) refers only to formula subgrant programs. Under these programs, any State priorities will be governed by the State's authority under the applicable Federal statutes and regulations.

Comment. Two commenters objected to the requirement in paragraph (b) that a State must fund an application if, among other things, the applicant complies with Federal statutes and regulations. The commenter said that the requirement does not recognize a State's interests in adopting State rules that may be more stringent than Federal regulations.

Response. No change has been made. A State may adopt reasonable rules and procedures that are not inconsistent with Federal statutes and regulations. However, paragraph (b) applies to programs in which local agencies are entitled to receive Federal funds. Under these programs, a State must provide the funds if the agency qualifies under the Federal statutes and regulations. The addition of paragraph titles clarifies this distinction.

Other changes. Paragraph (c)(1) has been revised to make it clear that only eligible applicants may receive a subgrant. Eligibility is determined under the program statute and implementing regulations. Paragraph (d) has been rewritten to make its intent clearer.

§ *100b.401 Disapproval of an application—opportunity for a hearing.*

Comment. One commenter suggested that there does not appear to be any explanation of why the particular programs are identified in proposed paragraph (b). One commenter wanted clarification of the specific programs that are listed.

Response. No change has been made. The programs listed are those for which the authorizing statutes require an opportunity for a hearing before the State can disapprove an application. Proposed paragraph (b) has been redesignated as paragraph (a), the list has been corrected, and the programs put in the same order as they appear in the table in § 100b.1. Proposed paragraph (a) has been revised and renumbered as paragraph (c), the content of which is discussed below.

Comment. One commenter suggested that under paragraph (a) (as redesignated) all applicants for funds under the listed programs should not have a right to a hearing before decisions are made regarding approval or disapproval. The commenter suggested that the hearing referred to in paragraph (a) be available only after disapproval.

Response. No change has been made. The authorizing statutes for the programs listed require a State to provide for a hearing before disapproval of an application.

Changes. Proposed paragraph (c) has been redesignated as paragraph (b) and revised to clarify the responsibilities of State agencies other than SEAs. Revised paragraphs (c) and (d) specify the conditions and procedures under which an SEA is required to provide an applicant with an opportunity for a hearing if the SEA does not approve an application. The new paragraphs implement procedures required under Section 425 of GEPA. A new paragraph (e) recognizes that State agencies other than SEAs are not bound by the procedures in Section 425 of GEPA, even if they must provide a hearing under a program listed in paragraph (a).

Allowable Costs

§ *100b.530 General cost principles.*

Comment. One commenter noted that this section contains a cross-reference to Subpart Q of 45 CFR Part 74 which, in turn, contains a cross-reference to the cost principles in the appendices to 45 CFR Part 74. Appendix C gives the granting agency authority to approve costs of its grantees that are State or local governments. The commenter suggested that a State that is a grantee of a Federal agency may be, in turn, a granting agency itself when it makes a subgrant to a subgrantee. The commenter suggested that the State ought to have authority to approve costs of its subgrantees.

Response. No change has been made. The Commissioner interprets the cost principles in the manner suggested by the commenter. See the discussion under § 100b.707 in this appendix.

§§ *100b.532–100b.533 Particular cost items.*

Changes. These sections replace proposed § 100b.531, which cross-referenced identical rules in §§ 100a.532–100a.534. For the convenience of readers, the text of §§ 100a.532 and 100a.533 is now repeated, rather than cross-referenced. Proposed § 100a.534 on foreign travel has been deleted. Foreign travel by grantees or subgrantees that are institutions of higher education is regulated under 45 CFR Part 74. (See the discussion under § 100a.534 in this appendix.)

§ 100b.534 *Use of tuition and fees restricted.*

Changes. This section has been added to replace the existing § 100b.58 in the General Provisions Regulations for Office of Education Programs. No change in the existing regulations is intended, other than clarifying the language.

Indirect Cost Rates

§ *100b.561 Approval of indirect cost rates.*

Changes. This section has been rewritten to conform to § 100a.561. See the preceding discussion under that section.

§ *100b.563 Restricted indirect cost rate—programs covered.*

Changes. The list of programs in the proposed section has been corrected and proposed § 100b.562 has been renumbered as § 100b.563. The numbering change is to conform the numbering to that used in Part 100a.

Coordination

§ *100b.580 Coordination with other activities.*

Changes. 1. New paragraphs (b) and (c) have been added to implement a statutory coordination requirement under the Basic Skills Program in Title II of ESEA.

2. Proposed paragraph (b) has been redesignated as paragraph (d).

§ *100b.581 Methods of coordination.*

Changes. A new paragraph (c) has been added. The new paragraph adds joint needs assessment, evaluation monitoring, technical assistance, and staff training as further examples of coordination. The opening phrase in the section has been conformed to the wording in § 100a.580.

Evaluation

§ *100b.591 Federal evaluation—cooperation by a grantee.*

Comment. Three commenters suggested that "any evaluation" is too broad an interpretation of the legislative intent covered in the statutory authority for this section.

Response. No change has been made. Grantee cooperation is required only with evaluations that are authorized by statute. (See the discussion under § 100a.591 in this appendix)

Participation of Students Enrolled in Private Schools

§§ *100b.650–100b.662*

Comment. One commenter asked for a list of the programs to which §§ 100b.650–100b.662 and § 100a.650 apply.

Response. No change has been made. If the authorizing statute for a program requires that students enrolled in private schools be given an opportunity to participate, the program regulations will specify the requirement.

Comment. One commenter suggested that, for some programs, the documentation required is excessive and has never been required before.

Response. No change has been made. If any documentation under EDGAR is not required for a specific program, appropriate language in the regulations for that program will eliminate the requirement, in accordance with the provisions of § 100b.2.

Comment. One commenter complained that the regulations require LEAs to provide services to private schools at LEA cost.

Response. No change has been made. In practically every instance the costs of administering a Federal program are provided as part of the grant or subgrant of Federal funds. In any case, EDGAR does not require that non-Federal funds be used to pay the costs of providing services to private school children.

Comment. Two commenters suggested that a definition of "genuine" is needed, and one commenter said LEAs should not be required to submit for private school children requests for services that are different from services requested for public school children.

Response. No change has been made. The services to be provided vary widely, depending on local circumstances, making it impractical to try to define "genuine" or "genuine opportunity" in detail by regulation.

Under § 100b.654, if the needs of private school children are different from the needs of public school children, it is expected that generally an application will have to contain two different components—one to meet the needs of the public school children and the other to meet the needs of the private school children. If the needs of the two groups differ, the statutes governing participation by private school children generally require that different services be designed to meet those different needs. If this is not true under a particular statute, the program regulations will specify an exception.

§ *100b.650 Private schools; purpose of* §§*100b.651–100b.662.*

Comment. One commenter suggested that paragraph (a) be reworded to read ". . . the authorizing statute requires the participation of children enrolled in private schools."

Response. No change has been made. The pertinent statutes require that opportunity for participation of private school children be provided but regulations cannot compel that participation, as the suggested wording could be understood to do. The language of the section has been changed to more clearly specify the requirement, but the substance of the regulations remains the same.

§ *100b.651 Responsibility of a State and a subgrantee.*

Comment. One commenter suggested that paragraph (a) read: ". . . its subgrantees provide for the equitable participation of students enrolled in private schools . . ." Another commenter suggested that the word "provide" be used rather than "give."

Response. The changes have been made. The section has been revised to require that a State and its subgrantees provide students enrolled in private schools with a genuine opportunity for equitable participation. The intent of the change is to emphasize that the regulations require fairness in determining program services for students enrolled in private schools.

Comment. One commenter suggested that other words be substituted for the word "benefits" in proposed § 100b.652.

Response. A change has been made. The word has been replaced by the phrase "funds and property that benefit" and proposed § 100b.652 has been incorporated into § 100b.651. In other sections the term "benefits" is used as a generic description of the services that are provided under the various programs to which §§ 100b.650–100b.662 apply. These services vary, depending on the nature of the program.

Other changes. 1. As a result of proposed § 100b.652 being incorporated into § 100b.651, proposed §§ 100b.653–100b.663 have been renumbered as §§ 100b.652–100b.662.

2. Section 100b.651 has been revised to clarify the responsibility of the State agencies that administer these programs.

§*100b.652 Consultation with representatives of private school students.*

Comment. One commenter suggested that consultation should required only with representatives who have indicated interest in a proposal.

Response. No change has been made. One purpose of consultation is to inform the representatives of the opportunities available under a program. Without consultation, the representatives might not know enough about the program to indicate any interest.

Comment. One commenter suggested that the requirements for prior consultation be dropped entirely as being an unreasonable burden.

Response. No change has been made. Consultation prior to decision is necessary for effective participation, which is required under these program statutes.

Comment. One commenter suggested deletion of proposed paragraph (d)(1), which would have required consultation about an applicant's decision to participate. The commenter said that a decision not to participate in a program should be made solely by the public agency.

Response. A change has been made. As revised, § 100b.652 provides that appropriate representatives of private school students are to be consulted during all phases of the development and design of the project. The list of examples does not include decisions to participate or not to participate since it would be too difficult to determine when those "decisions" are made. The emphasis should be on early and comprehensive consultation, so that the appropriate representatives have a fair opportunity for involvement in the development and design of the project.

Comment. One commenter suggested that a subgrantee should not have to worry about consulting with private school representatives who do not respond after a specified number of unsuccessful attempts to communicate with them. Another commenter was concerned that the regulations would require consultation with every private school in the area. Another commenter asked for clarification of the term "appropriate representatives."

Response. No change has been made. An applicant or subgrantee is required to consult, but the regulations do not require consultation with any representative of private school students who does not respond to reasonable attempts to consult with him or her. EDGAR does not attempt to define the term "appropriate representatives" because the meaning of the term depends on the nature of the program and the local situation.

§ 100b.654 Same or different benefits for private school students.

Comment. One commenter suggested that any differences should be settled at the planning stage and that this section should be deleted. Another commenter suggested that the provisions of proposed paragraph (b) (different services to meet different needs) be made subject to the provisions of proposed paragraph (a) (concentration of funds).

Response. A change has been made. The section has been rewritten to clarify its intent. This section is designed to ensure equitable participation where the needs of the private school students are either the same as or different from those of the public school students. Paragraph (a) of this section, as rewritten, states the general rule that services for private school students must be comparable to services for public school children. In meeting this general rule, paragraph (b) provides, in essence, that when the needs of public and private school students are the same, program services should be the same. Paragraph (c) provides that when needs are different, services must be different. Both paragraphs (b) and (c) are designed to ensure comparable services. It should be noted that paragraph (b) does not authorize concentration of funds or services beyond that authorized under the program statute and regulations. It merely requires that where funds are concentrated, private school children must be given equitable access.

Comment. One commenter suggested that there may be situations in which the needs of private school children may be beyond the skills, interests, and financial resources of the subgrantee.

Response. No change has been made. No situation should arise in which benefits for private school students are beyond the financial resources of the subgrantee, since the benefits for private school students will be federally funded. Nor should a situation arise which is beyond the competence of the public schools, since services for private school children are to be comparable to services for public school children.

Comment. Several commenters suggested dropping the words "who have needs of equal importance" from proposed paragraph (b)(2).

Response. A change has been made. The words have been deleted as unnecessary to the purpose or meaning of the requirements.

§ 100b.655 Level of expenditures for students enrolled in private schools.

Comment. One commenter suggested that this section could result in inequitable funding and should, therefore, be dropped.

Response. No change has been made. The purpose of the section is to provide for equitable services even though there might be unequal costs.

Comment. One commenter suggested that this section implies that the amount spent for private school students can be equal to or greater than the amount spent for public school students. The commenter suggested that, if costs for meeting the needs of public school students are greater, the subgrantee should be able to spend more for public school students.

Response. No change has been made. This section says that "different" amounts may be spent for services for private school students than are spent for public school students. "Different" means "less" or "more," depending on the circumstances. The services must be "comparable," as required by § 100b.654(a) and other sections.

Comment. One commenter suggested that the provision "shall spend a different average amount" is contrary to Title I of the Elementary and Secondary Education Act (ESEA) and that the word "shall" should be changed to "may".

Response. No change has been made. The word "shall" is used in Section 130(a) of ESEA, and § 100b.655 is, therefore, consistent with Title I.

Comment. Two commenters suggested that equal expenditures is not a good way to judge programs and that comparability is preferable.

Response. No change has been made. Comparability of quality, scope, and opportunity for participation (see § 100b.654) is essential regardless of whether the costs are equal. Equal expenditures is acceptable merely as an initial way to compare program services, particularly if the private school children will receive the same services as the public school children. Where service needs are the same, and costs of meeting those needs are comparable, § 100a.655 could provide a basis for auditing expenditures as a method of achieving compliance. Active consideration is being given to this possibility.

§ 10b.656 Information in an application for a subgrant.

Comment. Two commenters suggested that the number of eligible private school children be included as a required item of information in the application.

Response. A change has been made. The comment has been adopted. This information is necessary to assist the State in ensuring that private school students are receiving comparable benefits under a program. To avoid possible misinterpretations, the section requires the applicant to state the number of private school students "who have been identified as eligible." This should avoid putting an unreasonable burden on the applicant, since the information will be that provided by the appropriate representatives of the private school students.

Comment. One commenter suggested that this section be dropped and that individual program requirements be included in program regulations.

Response. No change has been made. The information required by this section appears to be the minimum needed for a subgrantee to demonstrate that private school children will have an equitable opportunity to participate in a federally assisted program. If the specification of requirements were left to individual program regulations, the likely result would be inconsistent requirements among the programs. Consolidation of requirements should simplify the application process for a school district that applies under several of these programs.

§ *100b.657 Separate classes prohibited.*

Comment. One commenter suggested that this section seems to prohibit dual enrollment.

Response. No change has been made. This section permits dual enrollment but prohibits inappropriate segregation of students who are dual enrollees.

§ *100b.658 Funds not to benefit a private school.*

Comment. One commenter suggested that the word "eligible" be inserted in paragraph (b) before the phrase "students enrolled in private schools."

Response. No change has been made. These regulations do not impose special eligibility requirements on these children. Eligibility is governed by the program statutes and regulations.

Comment. One commenter suggested dropping paragraph (b). The commenter said paragraph (b)(1) is a repetition of the language of paragraph (a) and that paragraph (b)(2) would appear to be in conflict with the objectives of such programs as ESEA Title IV-B, which provides library resources, textbooks, and other instructional materials to meet the general needs of students in private schools.

Response. No change has been made. Paragraph (b) prohibits the use of funds to meet the needs of a private school or the general needs of the private school students, regardless of the existing level of instruction referred to in paragraph (a). However, this section should not restrict the provision of materials under ESEA Title IV-B, and the ESEA IV-B program regulations will provide an exception.

§ *100b.659 Use of public school personnel.*

Comment. One commenter suggested that there may be other reasons than those given in paragraphs (a) and (b) for providing public personnel on other than public premises. These reasons might, for example, include the health and safety of private school children.

Response. A change has been made. The section has been revised to allow public personnel on nonpublic premises if this is necessary to make programs equitable for private school children. This change is intended to cover other appropriate circumstances, including those suggested by the commenter.

§ *100b.660 Use of private school personnel.*

Comment. One commenter suggested that this section implies that administrators can be paid for work outside their regular hours of duty and that this is contrary to Title I, ESEA.

Response. No change has been made. This section applies only to employees of private schools, such as teachers, and does not authorize payment to administrative personnel or other costs that would not be allowable under the particular program.

Other changes. The prohibition against a subgrantee's use of program funds to employ individuals who work part-time at a private school has been deleted from § 100b.660 as being unduly restrictive. Unless specifically restricted by statute (e.g., see 45 CFR Part 134—regulations under Title IV, ESEA), part-time employment by a private school should not automatically disqualify a person from being employed by a subgrantee—for other time periods—to provide program services.

§ *100b.661 Equipment and supplies.*

Comment. Two commenters suggested that the term "limited period of time" in paragraph (b), concerning placement of equipment and supplies in a private school, is misleading and vague and that more specific language would be preferable.

Response. A change has been made to clarify the meaning of the requirement.

Comment. One commenter suggested that paragraph (d) on removal of equipment and supplies be dropped as being implicit in the provisions of paragraph (c), which applies to use and installation of equipment and supplies in private schools.

Response. No change has been made. The language in paragraph (c) requires that it must be feasible to remove equipment and supplies from a private school without remodeling the premises, while paragraph (d) requires removal under specified conditions. The two paragraphs are complementary, not redundant.

§ *100b.680 Inventions and patents. [Proposed]*

Changes. Section 100b.680 has been deleted. EDGAR will not regulate on this subject for State-administered programs.

Other Requirements for Certain Programs

§§ *100b.682–100b.685 [Proposed]*

Changes. These sections have been renumbered as §§ 100b.681–100b.684. Section 100b.681 has been conformed to the wording in § 100a.681.

General Administrative Responsibilities

§ *100b.701 The State or subgrantee administers or supervises each project.*

Comment. Several commenters suggested that the language of this section may prohibit contracting or subcontracting for services that the subgrantee may need but cannot provide itself.

Response. A change has been made. The intent of the section is to prevent the transfer of legal or fiscal responsibility but not to preclude appropriate contracts. The change corresponds to a similar change to § 100a.701. (See the discussion under that section in this appendix.)

§ *100b.703 When a State may begin to obligate funds.*

Comment. Several commenters suggested that the term "substantially approvable" be defined so that the States are aware promptly of the date on which they can begin to obligate funds. One of these commenters suggested that the Commissioner promptly inform the States of the date when they could being to obligate funds even though some negotiation would be necessary to make the State plan fully approvable.

Response. A change has been made in accordance with the last suggestion. However, the term "substantially approvable" is retained to give the Commissioner flexibility in determining when a plan is close enough to begin approvable to allow a State to begin to obligate funds. This flexibility is necessary because of the wide variations among program statutes and State laws and procedures that affect the content of State plans.

Other changes. Redesignated paragraph (a) has been revised to clarify standards regarding submission of State plans. The date of submission will be determined in the same manner as for applications under Part 100a. A new paragraph (b) provides the standards for determining the date that a State plan was mailed. Proposed paragraph (b) has been redesignated as paragraph (c).

§ *100b.704 When subgrantees may begin to obligate funds.*

Comment. One commenter suggested that redesignated paragraph (c)(2) implies that an applicant may begin to obligate funds the moment the application is submitted, whether the State has approved it or not.

Response. A change has been made. The section has been revised to recognize that a State must give authorization before an applicant for a subgrant may begin to obligate funds.

Other changes. 1. A new paragraph (b) has been added to recognize that authorization of obligations is subject to the State's final approval of an application.

2. A new paragraph (c) recognizes the State's authority to approve "pre-agreement" costs under programs in which the applicant for a subgrant is not entitled to the funds.

Cross-reference.—See § 100b.707(h) of EDGAR.

§ *100b.705 Funds may be obligated during a "carryover period."*

Comment. One commenter suggested that this section may conflict with the Tydings Amendment.

Response. No change has been made. This section of the regulations restates the Tyding Amendment (Section 412(b) of GEPA) and is not in conflict with it.

§ *100b.706 Obligations made during a carryover period are subject to current statutes, regulations, and applications.*

Comment. One commenter suggested that the term "State plan" is more restrictive than the statute on which this section is based, and that the term "other document * * * required" is broader than the statute.

Response. A change has been made so that the terms in this section are consistent with the purpose of the statute (Section 412(b) of GEPA). The term "State plan," as defined in § 100b.102 and as used in this section, includes the terms "program plan" and "application," as used in Section 412(b) of GEPA, and is, therefore, consistent with the provisions of that statute. The term "other document" has been deleted as inappropriate and unnecessary.

Note.—Section 2(b) of Pub. L. 96-46 (enacted August 6, 1979) provides that Section 412(b)(2) of GEPA, which is reflected in § 100b.706, does not take effect with respect to the use of funds under Section 421 of the ESEA (Title IV-B—Instructional Materials and School Library Resources Program) until October 1, 1980, except at the option of local educational agencies. This section of EDGAR will, therefore, have a delayed effective date to this extent.

§ *100b.707 When obligations are made.*

Comment. One commenter asked if there is a time limit on the performance of personal services by a contractor or if the services may be performed after the end of the project period.

Response. No change has been made. The contract for personal services establishes the period for the performance of those services. The services should be performed within the project period approved by the State. However, there is no provision in Part 100b that is comparable to § 100a.261 (Extension of a project period). This is a matter left to State administration.

Comment. One commenter suggested that this section should make clear that a ruling by the Internal Revenue Service that a personal service contractor is actually an employee, rather than a contractor, does not affect the date the Education Division considers the obligation to have been made.

Response. No change has been made. If the personal services contract was entered into legally, and in good faith that the arrangement was not an employee-employer relationship, the provisions of paragraph (c) would be considered binding by the Education Division, even if the Internal Revenue Service ruled, for its own purposes, that the relationship is that of an employer and an employee.

Comment. One commenter suggested that personal services by a contractor should be considered to constitute obligations at the time the services are performed, rather than on the date the grantee makes a binding written commitment for the personal services.

Response. No change has been made. To achieve the purposes of the project, performance under a personal services contract may be necessary after the end of the project period. The Education Division may wish to reimburse grantees in these circumstances, and therefore has not adopted the comment.

Changes. A new paragraph (h) has been added to recognize the State's authority to approve preagreement costs. (See also § 100b.704(c).)

Note.—Under § 100b.707(b), the phrase "personal services by an employee of the State or subgrantee" refers only to services that are within the scope of the employment agreement.

§ *100b.720 Financial and performance reports by a State.*

Comment. One commenter asked the following:

1. Who establishes the reporting format?

2. Can the Commissioner require reports more often than annually?

Response. No change has been made.

1. The Commissioner establishes the reporting forms.

2. The Commissioner may require reports more often than annually if the conditions in 45 CFR 74.7 or 45 CFR 74.72(e) exist.

Reports

§ *100b.722 A subgrantee makes reports required by the State.*

Changes. Proposed § 100b.721 has been renumbered as § 100b.722 to conform more closely to numbering used in Part 100a.

Records

§ *100b.730 Records related to grant funds.*

Comment. One commenter suggested that the requirement for a State or subgrantee to keep records that fully show the "share of that cost provided from other sources" will add a burden to reporting.

Response. No change has been made. The requirement to keep records of those costs is in Section 437(a) of GEPA and cannot be waived.

§ *100b.731 Records related to compliance.*

Comment. One commenter suggested that the regulations should specifically identify the statutes listed in § 100b.500 as being covered by this section.

Response. A change has been made. This section does not require the retention of records relating to the statutes identified in § 100b.500. Those records are subject to the regulations referenced in § 100b.500, not to the requirements of EDGAR. The change is intended to make this distinction by limiting the recordkeeping responsibility to "program requirements." (See the discussion under § 100a.731 in this appendix.)

§ *100b.734 Record retention period.*

Comment. Three commenters noted that the five-year retention period differed from other periods identified elsewhere, particularly in 45 CFR Part 74 which establishes a retention period of three years. They suggested that this be clarified.

Response. A change has been made. The regulations in 45 CFR Part 74 are subject to any inconsistent statutory provisions. For Education Division programs, the five-year period in Section 437 of GEPA controls the minimum retention period. The change makes it clear that records must be retained for five years unless 45 CFR Part 74 requires a longer period, such as during an ongoing audit procedure. (See 45 CFR 74.21(b).)

Comment. One commenter suggested that subgrantees be given permission to dispose of fiscal documentation prior to the end of the five-year retention period if a Federal audit has been completed.

Response. No change has been made. The statutory authority for the five-year retention period (Section 437(a) of GEPA) makes no provision for shortening the records retention period in situations in which Federal audits have been completed.

Privacy

§ 100b.741 Protection of students' privacy in research and testing.

Comment. One commenter asked if this section applied both to State-administered and to direct grant programs. The commenter asked specifically what programs are covered.

Response. No change has been made. The regulations in Part 100b relate only to the programs listed in the table in § 100b.1, but there is a similar provision in Part 100a (§ 100a.741) that applies to all programs listed in § 100a.1. The statute on which these sections of EDGAR are based applies to all Office of Education programs.

Changes. This section has been revised to include the statutory material that was referenced in the proposed regulations.

Use of Funds by States and Subgrantees

§ 100b.761 Federal funds may pay 100 percent of costs.

Comment. One commenter suggested that the provisions of this section appear to be in conflict with 45 CFR 121a.186 of the program regulations under the Education of the Handicapped Act.

Response. No change has been made. Paragraph (b) of this section excludes programs in which the statute or implementing regulations limit the allowability of costs. 45 CFR 121a.186 establishes limits on costs that may be paid with program funds. Section 100b.761, therefore, does not apply to the projects to which the limitations in § 121a.186 apply.

Use of Funds by States and Subgrantees

§§ 100b.760 and 100b.761

Other changes. Proposed §§ 100b.750 and 100b.751 have been renumbered as §§ 100b.760 and 100b.761, respectively.

State Administrative Responsibilities

§ 100b.770 A State shall perform certain duties with respect to applications for subgrants.

§ 100b.771 A State shall encourage eligible applicants to apply.

Comment. One commenter asked what administrative responsibilities and reporting requirements will be made of the States.

Responses. No change has been made. The requirements in §§ 100b.700 and 100b.771 are the minimum that a State should undertake to conduct a sound administrative operation of a Federal program. The Commissioner has established no criteria for determining compliance beyond the regulations contained in EDGAR and in individual program regulations. These sections in EDGAR do not create or impose any new reporting requirements.

Comment. One commenter asked if "eligible applicant" refers to those so identified in the respective grant proposal announcement. Another commenter suggested that "encourage" might involve a big burden and suggested that only a "reasonable effort" be required.

Response. A change has been made to clarify the extent of the State's duty to encourage applicants to seek awards. "Eligible applicant" refers to those identified in the statute and the implementing regulations for a program.

Comment. One commenter suggested that the State be required to encourage only "known" eligible applicants. Another commenter suggested some specific procedures for encouraging eligible applicants to apply.

Response. A change has been made. The word "all" has been deleted to make it clear that a State's duty is to make reasonable efforts, as suggested in the preceding comment. With respect to specific procedures, it is preferable to let States establish their own procedures rather than trying to establish uniform procedures for all States, since circumstances may vary from program to program and State to State (e.g., populous, heavily urbanized States as compared to thinly populated, largely rural States).

§ 100b.772 Other responsibilities of the State.

Comment. One commenter suggested that, in the spirit of paperwork reduction, the Commissioner limit the power of the States to impose special regulations, procedures, etc. Another commenter asked for recognition of the State's authority to regulate.

Response. No change has been made. If the State has the legal responsibility to administer a federally funded program, the State must have the authority to establish reasonable rules and procedures. However, State rules and procedures should be designed in a way that minimize burden on applicants and be directly related to furthering the Federal program purpose.

Changes. 1. Paragraph (a) has been rewritten to require that a State provide general technical assistance and also assistance in the evaluation of projects. Under the proposed section, a State would have been required to provide technical assistance only with respect to evaluation of projects.

2. Paragraphs (b) and (c) have been revised to clarify the relationship of § 100b.772 to programs under Title I and IV of ESEA.

Complaint Procedures of a State

§ 100b.780 A State shall adopt complaint procedures.

Comment. One commenter questioned why the exemptions for Titles I and IV of ESEA provided for in this section are not stated in the same way.

Response. A change has been made. Paragraphs (b) and (c) have been revised to clarify the relationship of this section to the program under Title IV of ESEA. The difference in treatment between programs under Titles I of ESEA and those under Title IV of ESEA results from statutory provisions enacted in the Education Amendments of 1978.

Comment. One commenter suggested that the requirements in this section are excessive and appear to be contrary to the requirements in § 100b.781 (as renumbered).

Response. No change has been made. This section requires the State to establish complaint procedures; § 100b.781 contains certain minimum requirements that must be included in the procedures adopted under this section. The Commissioner believes that these two sections are the minimum necessary to protect the public, the State, and the subgrantees. To clarify the relationship between §§ 100b.781 and 100b.782, the sections have been transposed and renumbered accordingly.

§ 100b.781 Minimum complaint procedures.

Comment. One commenter suggested that this section not apply to due process procedures for students.

Response. No change has been made. The minimum procedures in § 100b.781

relate only to those complaints identified in § 100b.780.

Changes. The section has been revised to make it clear that a State has sixty calendar days from its receipt of a complaint to resolve the complaint. This time limit may be extended only if exceptional circumstances exist with respect to a particular complaint.

§ 100b.783 State educational agency action—subgrantee's opportunity for a hearing.

Other changes. This new section restates Section 425 of GEPA regarding a subgrantee's right to a hearing under certain programs.

Subpart H—What Procedures Does the Commissioner Use to Get Compliance?

§ 100b.900 Waiver of regulations prohibited.

Comment. One commenter said that paragraph (b) has the legal effect of holding the Federal Government harmless with respect to the acts of its agents.

Response. No change has been made. Paragraph (a) provides that no Federal official has any authority to waive any regulations unless the regulations specifically provide for a waiver. Paragraph (b) provides that, even if a Federal official purports to waive regulations, that individual has no authority to do so, and no one should rely on the purported waiver. This section is a formal notice to that effect.

§ 100b.901 Regulations in 45 CFR Part 74 on suspension and termination. (Proposed)

Changes. This section has been deleted. The Education Appeal Board procedures in Part 100d will govern all suspension and termination proceedings for Office of Education programs.

Note.—The procedures for the Education Appeal Board were published originally as interim final regulations (45 CFR Part 100e) in the **Federal Register** on May 25, 1979 (44 FR 30528).) When published as final regulations today, Part 100e will be redesignated as Part 100d of EDGAR. These regulations are referenced in EDGAR as Part 100d in order to avoid confusion after Part 100d is published in final.

§§ 100b.901–100b.902 Commissioner's compliance procedures.

Changes. Proposed §§ 100b.902 and 100b.903 have been renumbered as §§ 100b.901 and 100b.902. Certain technical corrections also have been made in the wording of these sections.

PART 100c—DEFINITIONS

§ 100c.1 General.

Comment. One commenter suggested that EDGAR include a definition of "consultant."

Response. No change has been made. Since there is no intent to attach a special meaning to the term "consultant," no definition is needed.

Comment. One commenter said that because EDGAR allows each State to determine the scope of the term "elementary school," some States that extend the term to include preschool programs might misspend program funds intended to serve grades 1 through 8.

Response. No change has been made. If program funds are authorized only for grades 1 through 8, the regulations for the program will specify the restriction, and will not use the term "elementary school" to describe allowable activities.

Comment. One commenter suggested that the definition of "fiscal year" be changed to indicate that the term refers to a period that corresponds to the Federal fiscal year.

Response. A change has been made. The revised definition makes it clear that it is a period concurrent with the Federal fiscal year, October 1 through September 30.

Comment. One commenter suggested that a definition for "institution of higher education" be included in EDGAR.

Response. No change has been made. Because of variations among program statutes that define "institution of higher education," a general definition is not included in EDGAR.

Comment. Several commenters suggested that the definition of "local educational agency" be broadened to include community colleges and post-secondary institutions.

Response. A change has been made. The revised definition makes it clear that for purposes of the Vocational Education Program, the term includes any institution that provides a vocational education program. Other statutes that define "local educational agency" preclude a broader definition.

Comment. One commenter suggested that the distinction between "private" and "nonpublic" should be made clearer.

Response. A change has been made. The definition of "nonpublic" has been rephrased to indicate that the difference between "nonpublic" and "private" is that "nonpublic" applies only to nonprofit agencies, organizations, and institutions.

Comment. One commenter suggested that EDGAR include a definition for "post-secondary educational institution" as it appears in the regulations for the Vocational Education Act.

Response. No change has been made. The definition of "post-secondary educational institution" that appears in the regulations for vocational education programs is not applicable to other education programs. The definition will continue to appear in the regulations implementing the Vocational Education Act.

Comment. Several commenters suggested that EDGAR should define the term "private school."

Response. No change has been made. A definition of "private school" could have a significant effect on the eligibility of certain students for participation in Federal education programs. For this reason, the Education Division will consider publishing a proposed definition for private school at a later date, and allow the public an opportunity to comment. Any suggestions regarding a general definition would be welcome. Suggestions may be sent to the contact person named in the preamble to the EDGAR regulations.

Comment. One commenter wanted clarification of the term "service function" with respect to a local educational agency.

Response. No change has been made. "service function" is a statutory term used in the definition of local educational agency. The definition of service function allows certain kinds of intermediate educational units to qualify as local educational agencies.

Comment. One commenter asked for the development of definitions that are consistent with definitions used by other Federal departments and agencies.

Response. No change has been made. Because Federal regulations must use terms as they are used in Federal statutes, separate regulations will continue to use different definitions as long as inconsistencies remain in the statutes. However, the Education Division—and the Department of Education when that agency takes effect—will continue to work toward the use of common definitions for terms used in Federal educational program regulations, as has been done in EDGAR.

Appendix B

PART 74—ADMINISTRATION OF GRANTS

As revised on August 2, 1978 (43 FR 34076).

Note.—Part 74 is republished as Appendix B to the EDGAR final regulations to assist readers in following cross-references to Part

74. This will not be published with Parts 100a–100d in the CFR.

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Authority: 5 U.S.C. 301.

Subpart A—General

§ 74.1 Purpose and scope of this part.

This part establishes uniform requirements for the administration of HEW grants and principles for determining costs applicable to activities assisted by HEW grants.

§ 74.2 Scope of subpart.

This subpart contains general rules pertaining to this Part 74 (definitions, purpose and scope, applicability, and appeals) and procedures for control of deviations from the part.

§ 74.3 Definitions.

As used in this part:

"Awarding party" means (1) with respect to a grant, the granting agency, and (2) with respect to a subgrant, the grantee. (See § 74.4(b))

"Contract" means (except as used in the definitions for "grant" and "subgrant" in this section and except where qualified by "Federal") a procurement contract under a grant or subgrant and "subcontract" means a procurement subcontract under such a contract.

"Cost-type contract" means a contract or subcontract in which the contractor or subcontractor is paid on the basis of the costs it incurs, but the term does not include such subcontracts under a non-cost-type contract or subcontract.

"Expenditure report" means: (1) For nonconstruction grants, the "Financial Status Report" (or other equivalent report); (2) for construction grants, the "Outlay Report and Request for Reimbursement for Construction Programs" (or other equivalent report). (See subpart I of this part.)

"Federally recognized Indian tribal government" means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs. However, for policies applicable to tribal government hospitals and institutions of higher education, see § 74.4(c), "Applicability of this part."

"Government" means a State or local government or a Federally recognized Indian tribal government. However, for policies applicable to government hospitals and institutions of higher education, see § 74.4(c), "Applicability of this part."

"Grant" means an award of financial assistance in the form of money, or property in lieu of money, by the Federal Government to an eligible recipient. The term includes such financial assistance when provided by contract, but does not include any Federal procurements subject to the procurement regulations in 41 CFR, nor does it include technical assistance, which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the recipient is not required to account for on an actual cost basis.

"Grantee" means the government, nonprofit corporation, or other legal entity to which a grant is awarded and which is accountable to the Federal Government for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the award document. For example, a grant award document may name as the grantee an agency of a State, or one school or campus of a university. In these cases, the granting agency usually intends, or actually requires, that the named component assume primary or sole responsibility for administering the grant-assisted project or program. Nevertheless, the naming of a component of a legal entity as the grantee in a grant award document shall not be construed as relieving the whole legal entity from accountability to the Federal Government for the use of the funds provided. (This definition is not intended to affect the eligibility provisions of grant programs in which eligibility is limited to organizations, such as State welfare departments, which may be only components of a legal entity.) The term "grantee" does not include any secondary recipients such as subgrantees, contractors, etc., who may receive funds from a grantee pursuant to a grant.

"Granting agency" means any organizational component of HEW authorized to award and administer grants.

"HEW" means the U.S. Department of Health, Education, and Welfare.

"Local government" means a local unit of government including specifically a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under State law), "sponsor or sponsoring local organization" of a watershed project (as defined in 7 CFR 620.2, 40 FR 12472, March 19, 1975), any other regional or interestate government entity, or any agency or instrumentality of a local government. However, for policies applicable to government hospitals and institutions of higher education, see § 74.4(c), "Applicability of this part."

"OGP" means the Office of Grants and Procurement, which is an organizational component within the Office of the Secretary, HEW, and reports to the Assistant Secretary for Management and Budget.

"OMB" means the Office of Management and Budget within the Executive Office of the President.

"Recipient" means grantee or subgrantee. (See § 74.4(b).)

"State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. However, for policies applicable to government hospitals and institutions of higher education, see § 74.4(c), "Applicability of this part."

"Subgrant" means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contract, but does not include procurements; nor does it include any form of assistance which is excluded from the definition of "grant" in this section.

"Subgrantee" means the government, nonprofit corporation, or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided. The subgrantee is the entire legal entity even if only a particular component of the entity is designated in the subgrant award document.

"Terms of a grant or subgrant" means all requirements of the grant or subgrant, whether in statute, regulations, the award document or elsewhere.

§ 74.4 Applicability of this part.

(a) *General.* Except where inconsistent with Federal statutes, regulations, or other terms of a grant, this part applies to all HEW grants. However, unless expressly made applicable by the granting agency, this part shall not apply when the grantee is a Federal agency, foreign government or organization, international organization such as the United Nations, for-profit organization, or individual.

(b) *Subgrants.* For each substantive provision in this part, either the language of the provision itself or other text in the same subpart will indicate whether the provision affects only grants, only subgrants, or both. Use of the term "recipient" (as defined in § 74.3) in a provision shall be taken as referring equally to grantees and subgrantees. Similarly, use of the term "awarding party" (as defined in § 74.3) shall be taken as referring equally to granting agencies and to grantees awarding subgrants. However, unless expressly made applicable by the granting agency, this part need not be applied by the grantee to a subgrant if the subgrantee is a Federal agency, foreign government or organization, international organization such as the United Nations, for-profit organization, or individual.

(c) *Public institutions of higher education and hospitals.* Grants and subgrants to institutions of higher education and hospitals operated by a government shall be subject only to provisions of this subpart that apply to nongovernmental organizations.

§ 74.5 Appeals.

In accordance with parts 16 and 75 of this title, grantees may appeal certain postaward administrative decisions made by HEW officials.

§ 74.6 Deviations.

(a) Except as provided in § 74.7, a deviation is any exception to this part not required by Federal statute without allowance of agency discretion. A deviation may be either:

(1) Use of any policy, procedure, form, standard, or grant or subgrant term which is inconsistent with an applicable provision of this part, or

(2) Failure to use any applicable policy, procedure, form, standard, or grant or subgrant term which is required by this part.

(b) In order to maintain uniformity to the greatest extent feasible, deviations shall be kept to a minimum. A deviation, whether proposed by an applicant, a recipient, or an official of the granting agency, may be authorized only when it is necessary to meet programmatic objectives, or to conserve grant funds, or when it is otherwise essential in the public interest.

(c) Except as provided in paragraph (d) of this section, a deviation from this part may be made only when authorized by both:

(1) The head of the granting agency or other officials if designated in or pursuant to formal deviation control procedures established by the agency, and

(2) OGP.

(d) Deviations from subpart Q of this part and appendixes C, D, E, and F to this part in individual cases (i.e., where only a single grant or subgrant is involved) shall not require OGP approval.

§ 74.7 Special grant or subgrant conditions.

(a) Without regard to the deviation control procedures of § 74.6, special grant conditions more restrictive than those prescribed in this part 74 may be imposed as needed when the granting agency has determined that the grantee:

(1) Is financially unstable,

(2) Has a history of poor performance, or

(3) Has a management system which does not meet the standards of this part.

(b) When special conditions are imposed under paragraph (a) of this section, the grantee will be notified in writing:

(1) Why the special conditions were imposed and

(2) What corrective action is needed.

Furthermore, in accordance with OMB Circulars A-102 and A-110, OMB and other Federal agencies in a granting relationship with the grantee will be provided copies of the notice to the grantee.

(c) Grantees may apply the provisions of paragraphs (a) and (b) of this section to their subgrantees. Whenever they do so, a copy of the notice to the subgrantee shall be furnished to the granting agency.

Subpart B—Cash Depositories

§ 74.10 Physical segregation and eligibility.

Except as provided in § 74.11, awarding parties shall not impose grant or subgrant terms which:

(a) Require the recipient to use a separate bank account for the deposit of grant or subgrant funds, or

(b) Establish any eligibility requirements for banks or other financial institutions in which recipients deposit grant or subgrant funds.

§ 74.11 Checks-paid basis letter of credit.

A separate bank account shall be used when payments under letter of credit are made on a "checks-paid" basis. A checks-paid basis letter of credit is one under which funds are not drawn until the recipient's checks have been presented to its bank for payment. (See Subpart K for definition of "letter of credit.")

§ 74.12 Minority-owned banks.

Consistent with the national goal of expanding opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority-owned banks. Upon request, OGP will furnish a list of minority-owned banks.

Subpart C—Bonding and Insurance

§ 74.15 General.

In administering grants and subgrants, recipients shall observe their regular requirements and practices with respect to bonding and insurance. No additional bonding and insurance requirements, including fidelity bonds, shall be imposed by the terms of the grant or subgrant except as provided in §§ 74.16 through 74.18.

§ 74.16 Construction and facility improvement.

(a) *Scope of this section.* This section covers requirements for bid guarantees, performance bonds, and payments bonds when the recipient will contract for construction or facility improvement (including alterations and renovations of real property) under a grant or subgrant.

(b) *Definitions.* (1) "Bid guarantee" means a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, if its bid is accepted, execute the required contractual documents within the time specified.

(2) "Performance bond" means a bond executed in connection with a contract to secure fulfillment of all the contractor's obligations under the contract.

(3) "Payment bond" means a bond executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(c) *Bids and contacts of $100,000 or less.* The recipient shall follow its own requirements and practices relating to bid guarantees, performance bonds, and payment bonds.

(d) *Bids and contracts exceeding $100,000.* The recipient may follow its own regular policy and requirements if the HEW granting agency has determined that the Federal Government's interest will be adequately protected. If this determination has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to 5 percent of the bid price;

(2) A performance bond on the part of the contractor for 100 percent of the contract price; and

(3) A payment bond on the part of the contractor for 100 percent of the contract price.

§ 74.17 Fidelity bonds.

(a) If the grantee is not a government, the granting agency may require it to carry adequate fidelity bond coverage where the absence of coverage for the grant-supported activity is considered as creating an unacceptable risk.

(b) If the subgrantee is not a government, the granting agency or the grantee may require that it carry adequate fidelity bond coverage where the absence of coverage for the subgrant-supported activity is considered as creating an unacceptable risk.

(c) A fidelity bond is a bond indemnifying the recipient against losses resulting from the fraud or lack of integrity, honesty or fidelity of one or more employees, officers or other persons holding a position of trust.

§ 74.18 Source of bonds.

Any bonds required under §§ 74.16(d)(1) through (3) or 74.17 shall be obtained from companies holding certificates of authority as acceptable sureties (31 CFR Part 223). A list of these companies is published annually by the Department of the Treasury in its Circular 570.

Subpart O—Retention and Access Requirements for Records

§ 74.20 Applicability.

(a) Except as provided in paragraph (b) of this section, this subpart applies to all financial and programmatic records, supporting documents, statistical records and other records of recipients and of contractors and subcontractors under grants and subgrants, which are:

(1) Required to be maintained by the terms of an HEW grant, or

(2) Otherwise reasonably considered as pertinent to an HEW grant.

(b) This subpart does not apply to records maintained by the contractor or subcontractor for any of the following types of awards it has received under a grant or subgrant:

(1) Any contract or subcontract of $10,000 or less, or

(2) Any contract or subcontract awarded using the formal advertising method of procurement, whether or not required to be so awarded, or

(3) Any subcontract awarded under a contract or subcontract described in paragraph (b)(2) of this section.

§ 74.21 Length of retention period.

(a) Except as provided in paragraphs (b) and (c) of this section, records shall be retained for 3-years from the starting date specified in § 74.22.

(b) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(c) In order to avoid duplicate recordkeeping, awarding parties may make special arrangements with recipients to retain any records which are continuously needed for joint use. The awarding party will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the awarding party the 3-year retention requirement is not applicable to the recipient.

§ 74.22 Starting date of retention period.

(a) *General.* (1) Where HEW grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee submits to HEW its single or last expenditure report for that period. However, if HEW grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits to HEW its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report to HEW. If an expenditure report has been waived, the retention period starts on the day the report would have been due. "Expenditure report" is defined in § 74.3.

(2) Exceptions to this paragraph are contained in paragraphs (b) through (d) of this section.

(b) *Equipment records.* The retention period for the equipment records required by § 74.140(a) starts from the date of the equipment's disposition (§ 74.139) or replacement (§ 74.138) or transfer at the direction of the awarding party (§ 74.136).

(c) *Records for income transactions after grant or subgrant support.* (1) In some cases an HEW requirement concerning the disposition of program income, as defined in subpart F of this part, will be satisfied by applying the income to costs incurred after expiration or termination of grant or subgrant support for the activity giving rise to the income. In such a case, the retention period for the records pertaining to the costs starts from the end of the recipient's fiscal year in which the costs are incurred.

(2) In some cases, there may be an HEW requirement concerning the disposition of copyright royalties or other program income which is earned after expiration or termination of grant or subgrant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the recipient's fiscal year in which the income is earned. (See subpart F of this part.)

(d) *Indirect cost rate proposals, cost allocation plans, etc.*—(1) *Applicability.* This paragraph applies to the following types of documents, and their supporting records:

(i) Indirect cost rate computations or proposals;

(ii) Cost allocation plans under Appendix C to this part;

(iii) Hospital patient care rate computations or proposals; and

(iv) Any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(2) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(3) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

§ 74.23 Substitution of microfilm.

Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

§ 74.24 Access to records.

(a) *Records of grantees.* HEW and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any books, documents, papers, or other records of the grantee which are pertinent to the HEW grant, in order to make audit, examination, excerpts, and transcripts.

(b) *Records of subgrantees.* HEW, the Comptroller General of the United States, and the grantee, or any of their authorized representatives, shall have the right of access to any books, documents, papers, or other records of the subgrantee which are pertinent to the HEW grant, in order to make audit, examination, excerpts, and transcripts.

(c) *Records of contractors and subcontractors.* Except as provided in § 74.20(b), HEW, the Comptroller General of the United States, the grantee, and (if the contract was awarded under a subgrant) the subgrantee, or any of their authorized representatives, shall have the right of access to any books, documents, papers, or other records of the contractor or subcontractor which are pertinent to the HEW grant, in order to make audit, examination, excerpts, and transcripts.

(d) *Expiration of right of access.* The rights of access in this section shall not be limited to the required retention period but shall last as long as the records are retained.

§ 74.25 Restrictions on public access.

Unless required by Federal statutes, awarding parties may not impose grant or subgrant terms which limit public access to records covered by this subpart except after a determination by the granting agency that the records must be kept confidential and would have been excepted from disclosure under HEW's "Freedom of Information" regulation (Part 5 of this title) if the records had belonged to HEW. This section does not require recipients or their contractors and subcontractors to permit public access to their records.

Subpart E—Waiver of Single State Agency Requirements

§ 74.30 Policy.

Requests to HEW from Governors, or other duly constituted State authorities, for waiver of single State agency requirements in accordance with section 204 of the Intergovernmental Cooperation Act of 1968 will be given expeditious handling. Whenever possible, such requests will be granted.

Subpart F—Grant-Related Income

§ 74.40 Scope of subpart.

This subpart contains policies and requirements relating to (a) program income and (b) interest and other investment income earned on advances of grant funds.

§ 74.41 Meaning of program income.

(a) Except as explained in paragraphs (b) and (c) of this section, program income means gross income earned by a recipient from activities part or all of the cost of which is either borne as a direct cost by a grant or counted as a direct cost towards meeting a cost sharing or matching requirement of a grant. It includes but is not limited to such income in the form of fees for services performed during the grant or subgrant period, proceeds from sale of tangible personal or real property, usage or rental fees, and patent or copyright royalties. If income meets this definition, it shall be considered program income regardless of the method used to calculate the amount paid to the recipient—whether, for example, by a cost-reimbursement method or fixed price arrangement. Nor will the fact that the income is earned by the recipient from a Federal procurement contract or from a procurement contract under a Federal grant awarded to another party affect the income's classification as program income.

(b) For research grants that are subject to an institutional cost-sharing agreement, income shall be considered program income only if it is earned from an activity part or all of the cost of which is borne as a direct cost by the Federal grant funds. An institutional cost-sharing agreement is one entered into between HEW and a grantee covering all of HEW's research project grants to the grantee in the aggregate.

(c) The following shall not be considered program income:

(1) Revenues raised by a government recipient under its governing powers, such as taxes, special assessments, levies, and fines. (However, the receipt and expenditure of such revenues shall be recorded as a part of grant or subgrant project transactions when such revenues are specifically earmarked for the project in accordance with the terms of the grant or subgrant.)

(2) Tuition and related fees received by an institution of higher education for a regularly offered course taught by an employee performing under a grant or subgrant.

(d) For the purposes of this subpart, program income is divided into several categories. Each category is treated in a separate section of this subpart.

§ 74.42 General program income.

(a) *Definition.* General program income means all program income accruing to a grantee during the period of grant support or to a subgrantee during the period of subgrant support, other than the special categories of such income treated in §§ 74.43 through 74.45.

(b) *Use.* (1) General program income shall be retained by the recipient and used in accordance with one or a combination of the alternatives in paragraphs (c), (d), and (e) of this section, as follows: The alternative in paragraph (c) may always be used by recipients and must be used if neither of the other two alternatives is permitted by the terms of the grant. The alternatives in paragraphs (d) or (e) may be used only if expressly permitted by the terms of the grant. In specifying alternatives that may be used, the terms of the grant may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income.

(2) The terms of a subgrant may restrict the use of general program income earned by the subgrantee to only one or some of the alternatives permitted by the terms of the grant, but the alternative in paragraph (c) of this section shall always be permitted.

(c) *Deduction alternative.* (1) Under this alternative, the income is used for allowable costs of the project or program. If there is a cost-sharing or matching requirement, costs borne by the income may not count toward satisfying that requirement. Therefore, the maximum percentage of Federal participation is applied to the net amount determined by deducting the income from total allowable costs and third-party in-kind contributions. The income shall be used for current costs unless the granting agency authorizes deferral to a later period.

(2) To illustrate this alternative, assume a project in which the grantee incurs $100,000 of allowable costs and receives no third-party in-kind contributions. If the grantee earns $10,000 in general program income and this alternative applies, that $10,000 must be deducted from the $100,000 before applying the maximum percentage of Federal participation. If that pecentage is 90 percent, the most that could be paid to the grantee would therefore be $81,000 (90 percent times $90,000).

(d) *Cost-sharing or matching alternative.* (1) Under this alternative, the income is used for allowable costs of the project or program but, in this case, the costs borne by the income may count toward satisfying a cost-sharing or matching requirement. Therefore, the maximum percentage of Federal participation is applied to total allowable costs and third-party in-kind contributions. The income shall be used for current costs unless the granting agency authorizes deferral to a later period.

(2) To illustrate this alternative, assume the same situation as in paragraph (c)(2) of this section. Under this alternative, the 90-percent maximum pecentage of participation would be applied to the full $100,000, and $90,000 could therefore be paid to the grantee. (It should be noted that if $20,000 of general program income is earned, only $80,000 could be paid, since a grant cannot pay for costs which have been borne by general program income.)

(e) *Additional costs alternative.* Under this alternative, the income is used for costs which are in addition to the allowable costs of the project or program but which nevertheless further the objectives of the Federal statute under which the grant was made. Provided that the costs borne by the income further the broad objectives of that statute, they need not be of a kind that would be permissible as charges to Federal funds.

Examples of purposes for which the income may be used are:

(1) Expanding the project or program.

(2) Continuing the project or program after grant or subgrant support ends.

(3) Supporting other projects or programs that further the broad objectives of the statute.

(4) Obtaining equipment or other assets needed for the project or program or for other activities that further the statute's objectives.

§ 74.43 Program income—proceeds from sale of real property and from sale of equipment and supplies acquired for use.

The following kinds of program income shall be governed by subpart O of this part:

(a) Proceeds from the sale of real property purchased or constructed under a grant or subgrant.

(b) Proceeds from the sale of equipment and supplies fabricated or purchased under a grant or subgrant and intended primarily for use in the grant- or subgrant-supported project or program rather than for sale or rental.

§ 74.44 Program income—royalties and other income earned from a copyrighted work.

(a) This section applies to royalties, license fees, and other income earned by a recipient from a copyrighted work developed under the grant or subgrant. Income of that kind is covered by this section whether a third party or the recipient itself acts as the publisher, seller, exhibitor, or performer of the copyrighted work. In some cases the recipient incurs costs to earn the income but does not charge these costs to HEW grant funds, to required cost-sharing or matching funds, or to other program income. Costs of that kind may be deducted from the gross income in order to determine how much must be treated as program income.

(b) The terms of the grant govern the disposition of income subject to this section. If the terms do not treat this kind of income, there are no HEW requirements governing the disposition. A grantee is not prohibited from imposing requirements of its own on the disposition of this kind of income which is earned by its subgrantees provided those requirements are in addition to and not inconsistent with any requirements imposed by the terms of the grant.

§ 74.45 Program income—royalties or equivalent income earned from patents or from inventions.

Disposition of royalties or equivalent income earned on patents or inventions arising out of activities assisted by a grant or subgrant shall be governed by determinations made or agreements entered into under HEW's patent regulations. (See parts 6 and 8 of this title.) If the determination or agreement does not provide for the disposition of the royalties or equivalent income, the disposition shall be in accordance with the recipient's own policies.

§ 74.46 Program income—income after grant or subgrant support not otherwise treated.

(a) This section applies to program income not treated elsewhere in this part which arises from or is attributable to an activity while supported by a grant or subgrant but which does not accrue until after the period of grant or subgrant support. An example is proceeds from the sale or rental of a residual inventory of merchandise fabricated or purchased by a grant-supported workshop during the period of support.

(b) The terms of the grant govern the disposition of income subject to this section. If the terms do not treat this kind of income, there are no HEW requirements governing the disposition. A grantee is not prohibited from imposing requirements of its own on the disposition of this kind of income which is earned by its subgrantees provided those requirements are in addition to and not inconsistent with any requirements imposed by the terms of the grant.

§ 74.47 Interest earned on advances of grant funds.

(a) Except when exempted by Federal statute (see paragraph (b) of this section for the principal exemption), grantees shall remit to the Federal Government any interest or other investment income earned on advances of HEW grant funds. This includes any interest or investment income earned by subgrantees and cost-type contractors on advances to them that are attributable to advances of HEW grant funds to the grantee. Unless the grantee receives other instructions from the responsible HEW official, the grantee shall remit the amount due by check or money order payable to the Department of Health, Education, and Welfare.

(b) In accordance with the Intergovernmental Cooperation Act of 1968 (Pub. L. 90–577), States, as defined in the act, shall not be accountable to the Federal Government for interest or investment income earned by the State itself, or by its subgrantees, where this income is attributable to grants-in-aid, as defined in the act (42 U.S.C. 4213).[1]

(c) Recipients are cautioned that they are subject to the provisions in § 74.61(e) for minimizing the time between the transfer of advances and their disbursement. Those provisions apply even if there is no accountability to the Federal Government for interest or other investment income earned on the advances.

Subpart G—Cost Sharing or Matching

§ 74.50 Scope of subpart.

(a) This subpart contains rules for satisfying Federal requirements for cost sharing or matching. These rules apply whether the cost sharing or matching is required by Federal statute or by other terms of the grant.

(b) HEW and a grantee may enter into an institutional cost-sharing agreement covering all of HEW's research project grants to that grantee in the aggregate. Except as provided by the institutional cost-sharing agreement, this subpart applies to the satisfaction of the grantee's obligation under the agreement, as well as to the satisfaction of cost-sharing or matching requirements that apply only to a single grant.

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[1] "State" is defined in the act to include any agency or instrumentality of a State, and the definition does not exclude a hospital or institution of higher education which is such an agency or instrumentality. "Grant-in-aid" is defined in the act to exclude "payments under research and development contracts or grants which are awarded directly and on similar terms to all qualifying organizations, whether public or private." (42 U.S.C. 4201)

§ 74.51 Definitions.

For purposes of this subpart:

"Cost sharing or matching" means the value of third-party in-kind contributions and that portion of the costs of a grant-supported project or program not borne by the Federal Government.

"Equipment" has the same meaning given to that term in § 74.132, except that instead of "acquisition cost," the words "market value at the time of donation" shall be substituted.

"Supplies" means all tangible personal property other than "equipment" as defined in this section.

"Third-party in-kind contributions" means property or services which benefit a grant-supported project or program and which are contributed by non-Federal third parties without charge to the grantee, the subgrantee, or a cost-type contractor under the grant or subgrant.

§ 74.52 Basic rule: Costs and contributions acceptable.

With the qualifications and exceptions listed in § 74.53, a cost-sharing or matching requirement may be satisfied by either or both of the following:

(a) Allowable costs incurred by the grantee, the subgrantee, or a cost-type contractor under the grant or subgrant. This includes allowable costs borne by non-Federal grants or by other cash donations from non-Federal third parties.

(b) The value of third-party in-kind contributions applicable to the period to which the cost-sharing or matching requirement applies.

§ 74.53 Qualifications and exceptions.

(a) *Costs borne by other Federal grants.* (1) Except as provided by Federal statute, a cost-sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to costs borne by general program income earned from a contract awarded under another Federal grant.

(2) For the purposes of this part, general revenue sharing funds under 31 U.S.C. 1221 are not considered a Federal grant. Therefore, in the absence of any provision of Federal statute to the contrary, allowable costs borne by these funds may count towards satisfying a cost-sharing or matching requirement.

(b) *Costs or contributions counted towards other Federal cost-sharing requirements.* Neither costs nor the values of third-party in-kind contributions may count towards satisfying a cost-sharing or matching requirement of an HEW grant if they have been or will be counted towards satisfying a cost-sharing or matching requirement of another Federal grant, a Federal procurement contract, or any other award of Federal funds.

(c) *Costs financed by general program income.* Costs financed by general program income, as defined in § 74.42, shall not count towards satisfying a cost-sharing or matching requirement of the HEW grant supporting the activity giving rise to the income unless the terms of the grant expressly permit the income to be used for cost sharing or matching. (This is the alternative for use of general program income described in § 74.42(d).)

(d) *Records.* Costs and third-party in-kind contributions counting towards satisfying a cost-sharing or matching requirement must be verifiable from the records of recipients or cost-type contractors. These records must show how the value placed on third-party in-kind contributions was arrived at. To the extent feasible, volunteer services shall be supported by the same methods that the organization uses to support the allocability of its regular personnel costs.

(e) *Special standards for third-party in-kind contributions.* (1) Third-party in-kind contributions shall count towards satisfying a cost-sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(2) A third-party in kind contribution shall not count as direct cost sharing or matching where, if the party receiving the contribution were to pay for it, the payment would be an indirect cost. Cost-sharing or matching credit for such contributions shall be given only if the recipient or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions. (Information on how to establish these rates can be obtained from the Division of Cost Allocation in any HEW regional office's Regional Administrative Support Center.)

(3) The values placed on third-party in-kind contributions for cost-sharing or matching purposes shall conform to the rules in the succeeding sections of this subpart. If a third-party in-kind contribution is of a type not treated in those sections, the value placed upon it shall be fair and reasonable.

§ 74.54 Valuation of donated services.

(a) *Volunteer services.* Unpaid services provided to a recipient by individuals shall be valued at rates consistent with those ordinarily paid for similar work in the recipient's organization. If the recipient does not have employees performing similar work, the rates shall be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(b) *Employees of other organizations.* When an employer other than a recipient or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services shall be valued at the employee's regular rate of pay exclusive of the employer's fringe benefits and overhead costs. If the services are in a different line of work, paragraph (a) of this section shall apply.

§ 74.55 Valuation of donated supplies and loaned equipment or space.

(a) If a third party donates supplies, the contribution shall be valued at the market value of the supplies at the time of donation.

(b) If a third party donates the use of equipment or space in a building but retains title, the contribution shall be valued at the fair rental rate of the equipment or space.

§ 74.56 Valuation of donated equipment, buildings, and land.

If a third party donates equipment, buildings, or land, and title passes to a recipient, the treatment of the donated property shall depend upon the purpose of the grant or subgrant, as follows:

(a) *Awards for capital expenditures.* If the purpose of the grant or subgrant is to assist the recipient in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching.

(b) *Other awards.* If assisting in the acquisition of property is not the purpose of the grant or subgrant, the following rules apply:

(1) If approval is obtained from the awarding party, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost sharing or matching. In the case of a subgrant, the terms of the HEW grant may require that the approval be obtained from the granting agency as well as the grantee. In all

cases, the approval may be given only if a purchase of the equipment or buildings or a purchase or rental of the land would be approved as an allowable direct cost.

(2) If approval is not obtained under paragraph (b)(1) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third-party in-kind contributions. Instead, they are treated as costs incurred by the recipient. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in subpart Q of this part, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

§ 74.57 Appraisal of real property.

In some cases under §§ 74.55 and 74.56, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the granting agency may require that the market value or fair rental rate be established by a certified real property appraiser (or by a representative of the U.S. General Services Administration, if available) and that the value or rate be certified by a responsible official of the party to which the property or its use is donated. For subgrants, this requirement may also be imposed by the grantee.

Subpart H—Standards for Grantee and Subgrantee Financial Management Systems

§ 74.60 Scope of subpart.

This subpart prescribes standards for financial management systems of grant- and subgrant-supported activities. Awarding parties shall not impose additional standards on recipients unless specifically provided for in a Federal statute (e.g. the Joint Funding Simplification Act, Pub. L. 93–510) or these regulations. However, suggestions and assistance may be provided in establishing or improving financial management systems when needed or requested.

§ 74.61 Standards.

Grantees and subgrantees shall meet the following standards for their grant and subgrant financial management systems.

(a) *Financial reporting.* Accurate, current, and complete disclosure of the financial results of each project or program shall be made in accordance with the financial reporting requirements of the grant or subgrant. The terms of grants and subgrants shall not require financial reporting on the accrual basis if the recipient's accounting system is maintained on the cash basis. When accrual reporting is statutorily required, a recipient whose accounting system is not maintained on that basis shall not be required to convert it to the accrual basis; the recipient may develop the accrual information through an analysis of the documentation on hand.

(b) *Accounting records.* Records which identify adequately the source and application of funds for grant- or subgrant-supported activities shall be maintained. These records shall contain information pertaining to grant or subgrant awards, authorizations, obligations, unobligated balances, assets, outlays, income, and, if the recipient is a government, liabilities.

(c) *Internal control.* Effective control and accountability shall be maintained for all grant or subgrant cash, real and personal property covered by subpart O of this part, and other assets. Recipients shall adequately safeguard all such property and shall assure that it is used solely for authorized purposes.

(d) *Budgetary control.* The actual and budgeted amounts for each grant or subgrant shall be compared. If appropriate or specifically required, recipients shall relate financial information to performance or productivity data, including the production of unit cost information. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(e) *Advance payments.* Procedures shall be established to minimize the time elapsing between the advance of Federal grant or subgrant funds and their disbursement by the recipient. When advances are made by a letter-of-credit method, the recipient shall make drawdowns as close as possible to the time of making disbursements. Grantees advancing cash to subgrantees shall conform sustantially to the same standards of timing and amount as apply to advances by Federal agencies to grantees, including requirements for timely reporting of cash disbursements and balances. (See subpart K of this part.)

(f) *Allowable costs.* Procedures shall be established for determining the reasonableness, allowability, and allocability of costs in accordance with the applicable cost principles prescribed by subpart Q of this part and the terms of the grant.

(g) *Source documentation.* Accounting records shall be supported by source documentation such as cancelled checks, paid bills, payrolls, contract and subgrant award documents, etc.

(h) *Audits*—(1) *General.* External or internal audits shall be made in accordance with generally accepted auditing standards, including the standards of the U.S. General Accounting Office's publication "Standards for Audit of Governmental Organizations Programs, Activities, and Functions."[1] The auditors engaged by the recipient shall meet the criteria for qualifications and independence in that publication.

(2) *Purpose and scope.* The purpose of these audits shall be to determine the effectiveness of the financial management systems and internal procedures established by the recipient to meet the terms of its grants and subgrants. The recipient's auditors need not examine every grant or subgrant awarded to the recipient. Rather, audits generally should be made on an organization-wide basis to test the fiscal integrity of financial transactions and compliance with the terms of awards. These tests would include an appropriate sampling of Federal grants and subgrants.

(3) *Frequency.* These audits shall be conducted on a continuing basis or at scheduled intervals, usually once a year, but at least every two years. The frequency shall depend on the nature, size and complexity of the recipient's grant- or subgrant-supported activities.

(4) *Relation to Federal audit.* These audits may affect the frequency and scope of Federal audit. However, nothing in this section is intended to limit the right of the Federal Government to conduct an audit of a grant- or subgrant-supported activity.

(5) *Audit resolution.* The recipient shall follow a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

(6) *Copies of audit reports.* A copy of each audit report, and a description of its resolution, shall be furnished to the appropriate regional office of the HEW Audit Agency.

Subpart I—Financial Reporting Requirements

§ 74.70 Scope and applicability of subpart.

(a) This subpart prescribes requirements and forms for grantees to report financial information to HEW, and to request grant payments when a letter of credit is not used.

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[1] Available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(b) This subpart need not be applied by grantees in dealing with their subgrantees. However, grantees are encouraged not to impose on subgrantees more burdensome requirements than HEW imposes on grantees.

§ 74.71 Definitions.

As used in this subpart or in the forms identified by this subpart:

"Accrued expenditures" are the charges by grantee during a given period requiring the provision of funds for: (a) Goods and other tangible property received; (b) services performed by employees, contractors, subgrantees, and other payees; and (c) amounts "becoming owed" for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

"Accrued income" is the sum of (a) earnings during a given period from services performed by the grantee and from goods and other tangible property delivered to purchasers, and (b) amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

"Federal funds authorized" means the total amount of Federal funds obligated by the Federal Government and authorized for use by the grantee.

"In-kind contributions" means "third-party in-kind contributions" as defined in subpart G of this part.

"Obligations" are the amounts of orders placed, contracts and subgrants awarded, services received, and similar transactions during a given period, which will require payment during the same or a future period.

"Outlays" are charges made to the grant project or program. Outlays may be reported on a cash or accrual basis.

"Program income" has the same meaning it has in subpart F of this part.

"Unobligated balance" is the portion of the Federal funds authorized which has not been obligated by the grantee and is determined by deducting the grantee's cumulative obligations from the cumulative Federal funds authorized.

"Unliquidated obligations," for reports prepared on a cash basis, are the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they are the amount of obligations incurred by the grantee for which an outlay has not been recorded.

§ 74.72 General.

(a) Except as provided in paragraphs (d) and (e) of this section, grantees shall use only the forms specified in §§ 74.73 through 74.76, and such supplementary or other forms as may from time to time be authorized by OGP, for:

(1) Submitting grant financial reports to granting agencies, or

(2) Requesting advances or reimbursements when letters of credit are not used.

(b) Grantees shall follow all applicable standard instructions issued by OMB for use in connection with the forms specified in §§ 74.73 through 74.76. Granting agencies may issue substantive supplementary instructions only with the approval of OGP. Granting agencies may shade out or instruct the grantee to disregard any line item that the granting agency finds unnecessary for its decision making purposes.

(c) Grantees will not be required to submit more than the original and two copies of forms required under this subpart.

(d) Granting agencies may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. Granting agencies may accept the required information from grantees in machine usable format or computer printouts instead of prescribed formats.

(e) When a granting agency has determined that a grantee's accounting system does not meet the standards for financial management systems contained in subpart H of this part, it may require financial reports with more frequency or more detail (or both), upon written notice to the grantee (without regard to § 74.7), until such time as the standards are met.

(f) HEW may waive any report required by this subpart if not needed.

(g) Granting agencies may extend the due date for any financial report upon receiving a justified request from the grantee.

§ 74.73 Financial Status Report.

(a) *Form.* Grantees shall use Standard Form 269, Financial Status Report, to report the Status of funds for all nonconstruction grants.

(b) *Accounting basis.* Each grantee shall report program outlays and program income on the same accounting basis, i.e., cash or accrued expenditure (accrual), which it uses in its accounting system.

(c) *Frequency.* The granting agency may prescribe the frequency of the report for each project or program. However, the report shall not be required more frequently than quarterly except as provided in §§ 74.7 and 74.72(e). If the granting agency does not specify the frequency of the report, it shall be submitted annually. A final report shall be required upon expiration or termination of grant support.

(d) *Due date.* When reports are required on a quarterly or semiannual basis, they shall be due 30 days after the reporting period. When required on an annual basis, they shall be due 90 days after the grant year. Final reports shall be due 90 days after the expiration or termination of grant support.

§ 74.74 Federal Cash Transactions Report.

(a) *Form.* (1) For grants paid by letters of credit (or Treasury check advances) through any HEW payment office except the Departmental Federal Assistance Financing System (DFAFS), the grantee shall submit to the payment office Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272a. For grants paid by DFAFS, the grantee shall submit DFAFS Report 27, Recipient Report of Expenditures, to DFAFS.

(2) These reports will be used by the HEW payment office to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant from grantees. The format of the report may be adapted as appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment: *Provided,* That the information to be submitted is not changed in substance.

(b) *Forecasts of Federal cash requirements.* Forecasts of Federal cash requirements may be required in the "Remarks" section of the report.

(c) *Cash in hands of secondary recipients.* When considered necessary and feasible by the responsible HEW payment office, grantees may be required to report the amount of cash subadvances in excess of three days' needs in the hands of their subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(d) *Frequency and due date.* Grantees shall submit the report no later than 15 working days following the end of each quarter. However, where a letter of credit authorizes advances at an annualized rate of one million dollars or more, the HEW payment office may require the report to be submitted within 15 working days following the end of each month.

§ 74.75 Request for Advance or Reimbursement.

(a)(1) *Advance payments.* Requests for Treasury check advance payments shall be submitted on Standard Form

270, Request for Advance or Reimbursement. (This form is not used for drawdowns under a letter of credit or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) *Reimbursements.* Requests for reimbursement under non-construction grants shall also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see § 74.76(a).)

(b) The frequency for submitting payment requests is treated in § 74.96.

§ 74.76 Outlay report and request for reimbursement for construction programs.

(a) *Construction grants paid by reimbursement method.* (1) Requests for reimbursement under construction grants shall be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. Granting agencies may, however, prescribe the Request for Advance or Reimbursement form specified in § 74.75 instead of this form.

(2) The frequency for submitting reimbursement requests is treated in § 74.96.

(b) *Construction grants paid by letter of credit or Treasury check advance.* (1) When a construction grant is paid by letter of credit or Treasury check advances, the grantee shall report its outlays to the granting agency using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. The granting agency will provide any necessary special instruction. However, frequency and due date shall be governed by § 74.73(c) and (d).

(2) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances shall be requested on the form specified in § 74.75.

(3) The granting agency may substitute the Financial Status Report specified in § 74.73 for the Outlay Report and Request for Reimbursement.

(c) *Accounting basis.* The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by § 74.73(b).

Subpart J—Monitoring and Reporting of Program Performance

§ 74.80 Scope of subpart.

This subpart sets forth the procedures for monitoring and reporting program performance of recipients. These procedures are designed to place reliance on recipients to manage the day-to-day operations of their grant- and subgrant-supported activities.

§ 74.81 Monitoring by recipients.

Recipients shall monitor the performance of grant- and subgrant-supported activities. They shall review each program, function, or activity to assure that adequate progress is being made towards achieving the goals of the grant or subgrant.

§ 74.82 Performance reports under nonconstruction grants.

(a) Where the granting agency determines that performance information sufficient to meet its programmatic needs will be available from subsequent applications, the granting agency will require the grantee to submit a performance report only upon expiration or termination of grant support. This report will be due on the same date as the final Financial Status Report unless waived by the granting agency. Note that the "Application for Federal Assistance (Nonconstruction Programs)" prescribed by subpart N of this part, when used to request continued support, provides information substantially equivalent to a performance report.

(b) Except as provided in paragraph (a) of this section, grantees shall submit annual performance reports unless the granting agency requires quarterly or semiannual reports. Annual reports shall be due 90 days after the grant year; quarterly or semiannual reports shall be due 30 days after the reporting period. A final performance report shall be due 90 days after the expiration or termination of grant support. Granting agencies may extend the due date for any performance report upon receiving a justified request from the grantee. In addition, granting agencies may waive the requirement for any performance report which is not needed.

(c) The content of performance reports shall conform to any instructions issued by the granting agency, including, to the extent appropriate to the particular grant, a brief presentation of the following for each program, function, or activity involved:

(1) A comparison of actual accomplishments to the goals established for the period. Where the output of the project or program can be readily expressed in numbers, a computation of the cost per unit of output may be required if that information will be useful.

(2) The reasons for slippage if established goals were not met.

(3) Other pertinent information including, when appropriate, analysis and explanation of unexpectedly high overall or unit costs.

(d) Grantees will not be required to submit more than the original and two copies of performance reports.

(e) Grantees shall adhere to the standards in paragraphs (a) through (d) of this section in prescribing performance reporting requirements for subgrantees.

§ 74.83 Performance reports under construction grants.

In general, awarding parties rely heavily on on-site technical inspection and certified percentage-of-completion data to keep themselves informed as to progress under construction grants and subgrants. Formal performance reports to supplement those sources of information shall be required only if considered necessary by the awarding party, and in no case more frequently than quarterly.

§ 74.84 Significant developments between scheduled reporting dates.

Between the scheduled performance reporting dates, events may occur which have significant impact upon the grant- or subgrant-supported activity. In such cases, the recipient shall inform the awarding party as soon as the following types of conditions become known:

(a) Problems, delays, or adverse conditions which will materially impair the ability to attain the objective of the award. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(b) Favorable developments which enable meeting time schedules and goals sooner or at less cost than anticipated or producing more beneficial results than originally projected.

§ 74.85 Site visits.

Site visits may be made as necessary by representatives of HEW to:

(a) Review program accomplishments and management control systems.

(b) Provide such technical assistance as may be required.

Subpart K—Grant and Subgrant Payment Requirements

§ 74.90 Scope of subpart.

This subpart prescribes the basic standard and the methods under which HEW will make grant payments to grantees, and grantees will make subgrant payments to their subgrantees.

§ 74.91 Definitions.

As used in this subpart:

"Advance by Treasury check" is a payment made by a Treasury check to a grantee, upon its periodic request or through the use of predetermined payment schedules, before payments are made by the grantee.

"Letter of credit" is an instrument certified by an authorized official which authorizes a recipient to draw funds needed for immediate disbursement in accordance with Treasury Circular No. 1075.

"Percentage of completion method" refers to a system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee's rate of disbursements.

§ 74.92 Basic standard.

Methods and procedures for making payments to recipients shall minimize the time elapsing between the transfer of funds and the recipient's disbursements.

§ 74.93 Payment methods under nonconstruction grants.

(a) Letters of credit will be used to pay HEW grantees when all of the following conditions exist:

(1) There is or will be a continuing relationship between the grantee and the HEW payment office for at least a year and the total amount of advances to be received from the HEW payment office is $120,000 or more per year,

(2) The grantee has maintained, or demonstrated to HEW the willingness and ability to maintain, procedures that minimize the time elapsing between the transfer of funds from the Treasury and their disbursement by the grantee, and

(3) The grantee's financial management system meets the standards for fund control and accountability in Subpart H of this part.

(b) Advances by Treasury check will be used, in accordance with Treasury Circular No. 1075, when the grantee does not meet the requirements in paragraph (a)(1) of this section but does meet the requirements in paragraphs (a) (2) and (3) of this section.

(c) Reimbursement by Treasury check will be preferred method when the requirements of either paragraph (a)(2) or paragraph (a)(3) of this section are not met. This method may also be used when the major portion of the program is accomplished through private market financing or Federal loans, and the Federal grant assistance constitutes a minor portion of the program.

§ 74.94 Payment methods under construction grants.

(a) Reimbursement by Treasury check shall be the preferred method when the grantee does not meet the requirements specified in § 74.93(a) (2) or (3), and may be used for any HEW construction grant unless HEW has entered into an agreement with the grantee to use a letter of credit for all HEW grants, including construction grants.

(b) When the reimbursement by Treasury check method is not used, § 74.93 (a) and (b) shall apply to the construction grant. Implementing procedures under § 74.93 (a) and (b) will be insofar as possible the same for construction grants as for nonconstruction grants awarded to the same grantee.

(c) HEW will not use the percentage of completion method to pay its construction grants. The grantee may use that method to pay its construction contractor, but if it does, HEW's payments to the grantee will nevertheless be based on the grantee's actual rate of disbursements.

§ 74.95 Withholding of payments.

(a) Unless otherwise required by Federal statute, payments for proper charges incurred by grantees will not be withheld unless (1) the grantee has failed to comply with Federal reporting requirements or (2) the grant is suspended pursuant to § 74.114 or (3) the grantee owes money to the United States and collection of the debt by withholding grant payments will not impair the accomplishment of the objectives of any grant program sponsored by the United States.

(b) Cash withheld for failure to comply with reporting requirements but without suspension of the grant will be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with § 74.114. When a debt is to be collected, HEW may withhold payments or require appropriate accounting adjustments to recorded grant cash balances for which the grantee is accountable to the Federal Government, in order to liquidate the indebtedness.

§ 74.96 Requesting advances or reimbursements.

(a) If advances are made by Treasury check and the advances are not prescheduled, the grantee shall submit its requests for payment monthly. Less frequent requests are not permitted because they would result in advances covering excessive periods of time.

(b) If payments are made through reimbursement by Treasury check, the grantee may submit its requests for reimbursement monthly and may submit them more often if authorized. The grantee will be paid as promptly as possible, ordinarily within 30 days after receipt of a proper request for reimbursement.

(c) The forms for requesting advances or reimbursements are identified in subpart I of this part.

§ 74.97 Payments to subgrantees.

Grantees shall observe the requirements of this subpart in making (or withholding) payments to subgrantees, with the following exceptions:

(a) Advance payment by check may be used instead of letter of credit;

(b) The forms specified in subpart I of this part for requesting advances and reimbursements are not required to be used by subgrantees; and

(c) The reimbursement by check method may be used to pay any construction subgrant, whether or not HEW has agreed to use a letter of credit for all direct HEW grants to that same recipient.

Subpart L—Programmatic Changes and Budget Revisions

§ 74.100 Scope and applicability of this subpart.

(a) *Scope.* This subpart deals with prior approval requirements for post-award programmatic changes and budget revisions by recipients.

(b) *Exemption of mandatory grants.* Sections 74.103 through 74.106 do not apply to programmatic changes or budget revisions made by grantees under State plan or other grants which the granting agency is required by law to award if the applicant meets all applicable requirements for entitlement. (These are generally called "mandatory" or "formula" grants.)

(c) *Exemption of certain subgrants.* Sections 74.103 through 74.106 do not apply to subgrants from States to their local governments under a mandatory or formula grant, if the local government is not required to apply for the subgrant on a project basis. Generally, such exempt subgrants will occur under a State plan which provides for local administration of a State-wide program under State supervision.

§ 74.101 Relationship to cost principles.

The cost principles in Appendices C, D, E, and F to this part contain requirements for prior approval of certain types of costs (see § 74.176). Except when waived, those requirements apply to all grants and subgrants even if §§ 74.103 through 74.106 do not.

§ 74.102 Prior approval procedures.

(a) *For grants.* When requesting a prior approval required by this subpart, grantees shall address their requests to the responsible grants officer of the granting agency. Approvals shall not be valid unless they are in writing and signed by either the grants officer, the head of the granting agency, or the head of the granting agency's regional office.

(b) *For subgrants.* Grantees shall be responsible for reviewing requests from their subgrantees for the approvals required by this subpart and for giving or denying the approval. A grantee shall not approve any action which is inconsistent with the purpose or terms of the Federal grant. If an action by a subgrantee will result in a change in the overall grant project or budget requiring granting agency approval, the grantee shall obtain that approval before giving its approval to the subgrantee. Approvals shall not be valid unless they are in writing and signed by an authorized official of the grantee.

(c) *Timing.* Within 30 days from the date of receipt of a request for approval, the approval authority shall review the request and notify the recipient of its decision. If the request for approval is still under consideration at the end of 30 days, the approval authority shall inform the recipient in writing as to when to expect the decision.

§ 74.103 Programmatic changes.

(a) *Scope.* This section contains requirements for prior approval of departures, other than budget revisions, from approved project plans. In addition to the requirements in this section, awarding parties may require prior approval for other kinds of programmatic changes to an approved grant or subgrant project.

(b) *Changes to project scope or objectives.* The recipient shall obtain prior approval for any change to the scope or objectives of the approved project. (For construction projects, any material change in approved space utilization or functional layout shall be considered a change in scope.)

(c) *Changes in key people.* The recipient of a grant or subgrant for research (or any other kind of grant or subgrant if the terms of the award make this rule applicable) shall obtain prior approval:

(1) To continue the project during any continuous period of more than 3 months without the active direction of an approved project director or principal investigator; or

(2) To replace the project director or principal investigator (or any other persons named and expressly identified as key project people in the notice of grant or subgrant award) or to permit any such people to devote substantially less effort to the project than was anticipated when the grant or subgrant was awarded.

(d) *Other programmatic changes.* The following shall require prior approval except to the extent explicitly included in the project plan as approved by the awarding party at the time of award:

(1) Providing financial assistance to a third party by subgranting or any other means.

(2) Tranferring to a third party, by contracting or any other means, the actual performance of the substantive programmatic work. The term "substantive programmatic work" means activities which are central to carrying out the purpose of the project, and not merely incidental. Transfer of substantive programmatic work does not include purchase of supplies, materials, or equipment; acquisition of general or incidental support services; obtaining advice; or transfer of activities whose cost is treated as an indirect cost.

(3) Providing medical care to individuals under research grants.

§ 74.104 Budgets generally.

(a) *Definitions.* In this subpart:

(1) "Budget" means the recipient's financial plan for carrying out the project or program.

(2) "Approved budget" means a budget (including any revised budget) which has been approved by the awarding party.

(b) *Research project budgets.* For research projects, approved budgets shall not include the recipient's share of project costs.

(c) *Non-research project budgets.* For non-research projects which involve cost sharing or matching, approved budgets shall ordinarily consist of a single set of figures covering total project cost (the sum of the awarding party's share and the recipient's share). However, the awarding party may specify that the recipient's share not be included in the approved budget. In no case, however, shall the approved budget be in the form of a separate set of figures for each share.

(d) *Subdivision by programmatic segments.* Some grants and subgrants encompass two or more programmatic segments (such as discrete programs, projects, functions, or types of activities). In these cases, the awarding party may require that the approved budget be subdivided to show the anticipated cost of each programmatic segment.

§ 74.105 Budget revisions—nonconstruction projects.

(a) Except as provided in paragraph (b) of this section, the recipient of a grant or subgrant having an approved budget shall obtain prior approval for any budget revision which will:

(1) Involve transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or

(2) Involve transfer of amounts previously budgeted for student support (tuition waivers, stipends, and other payments to or for trainees), or

(3) Result in a need for the award of additional funds, e.g., an increase in the base upon which indirect costs are calculated which will increase allocable indirect costs and result in a claim for a supplementary award.

(b) Any or all of the prior approval requirements in paragraph (a) of this section may be waived by the awarding party.

(c) Except as provided in §§ 74.107 and 74.176, other budget changes under nonconstruction grants do not require approval.

§ 74.106 Budget revisions—construction projects.

Unless provided otherwise by the terms of the grant or subgrant, revisions to construction project budgets do not require approval.

§ 74.107 Construction and nonconstruction work under the same grant or subgrant.

When a grant or subgrant provides support for both construction and nonconstruction work, the awarding party may require prior approval before any fund or budget transfers between the two types of work.

§ 74.108 Authorized funds exceeding needs.

The recipient shall notify the awarding party promptly whenever the amount of grant or subgrant authorized funds is expected to exceed needs by more than $5,000 or 5 percent of the grant or subgrant, whichever is greater. This notification will not be required under continuing grants or subgrants if the application for the next period's funding will include an estimate of what the unobligated balance of authorized funds will be at the end of the current period.

Subpart M—Grant and Subgrant Closeout, Suspension, and Termination

§ 74.110 Definitions.

"Grant closeout" means the process by which a granting agency determines that all applicable administrative actions and all required work of the grant have been completed by the grantee and the granting agency.

"Suspension" of a grant means temporary withdrawal of the grantee's authority to obligate grant funds pending corrective action by the grantee or a decision to terminate the grant.

"Termination" of a grant means permanent withdrawal of the grantee's authority to obligate previously awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee. "Termination" does not include:

(a) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period;

(b) Refusal by the granting agency to extend a grant or award additional funds (such as refusal to make a competing or noncompeting continuation, renewal, extension, or supplemental award);

(c) Withdrawal of the unobligated balance as of the expiration of a grant;

(d) Annulment, i.e., voiding, of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

§ 74.111 Closeout.

(a) Each grant shall be closed out as promptly as is feasible after expiration or termination.

(b) In closing out HEW grants, the following shall be observed:

(1) Upon request, HEW shall promptly pay the grantee for any allowable reimbursable costs not covered by previous payments.

(2) The grantee shall immediately refund or otherwise dispose of, in accordance with instructions from HEW, any unobligated balance of cash advanced to the grantee.

(3) The grantee shall submit, within 90 days of the date of expiration or termination, all financial, performance, and other reports required by the terms of the grant. HEW may extend the due date for any report upon receiving a justified request from the grantee, and may waive any report which is not needed.

(4) The granting agency shall make a settlement for any upward or downward adjustment of the Federal share of costs, to the extent called for by the terms of the grant.

(c)(1) The closeout of a grant does not affect the retention period for, or Federal rights of access to, grant records. See subpart D of this part.

(2) If a grant is closed out without audit, the granting agency retains the right to disallow and recover an appropriate amount after fully considering any recommended disallowances resulting from an audit which may be conducted later.

(3) The closeout of a grant does not affect the grantee's responsibilities with respect to property under subpart O of this part, or with respect to any program income for which the grantee is still accountable under subpart F of this part.

§ 74.112 Amounts payable to the Federal Government.

For each grant, the following sums shall constitute a debt or debts owed by the grantee to the Federal Government, and shall, if not paid upon demand, be recovered from the grantee or its successor or assignees by set-off or other action as provided by law:

(a) Any grant funds paid to the grantee by the Federal Government in excess of the amount to which the grantee is finally determined to be entitled under the terms of the grant;

(b) Any interest or other investment income earned on advances of grant funds which is due the Federal Government pursuant to § 74.47;

(c) Any royalties or other special classes of program income which, under the terms of the grant, are required to be remitted to the Federal Government (see subpart F of this part);

(d) Any amounts due the Federal Government under subpart O of this part; and

(e) Any other amounts finally determined to be due the Federal Government under the terms of the grant.

§ 74.113 Violation of terms.

(a) When a grantee has materially failed to comply with the terms of a grant, the granting agency may suspend the grant, in accordance with § 74.114, terminate the grant for cause, as provided in § 74.115, or take such other remedies as may be legally available and appropriate in the circumstances.

(b) If a project or program is supported over two or more funding periods, a grant may be suspended or terminated in the current period for failure to submit a report still due from a prior period.

§ 74.114 Suspension.

(a) When a grantee has materially failed to comply with the terms of a grant, the granting agency may, upon reasonable notice to the grantee, suspend the grant in whole or in part. The notice of suspension will state the reasons for the suspension, any corrective action required of the grantee, and the effective date. The suspension may be made effective at once if a delayed effective date would be unreasonable considering the granting agency's responsibilities to protect the Federal Government's interest. Suspensions shall remain in effect until the grantee has taken corrective action satisfactory to the granting agency, or given evidence satisfactory to the granting agency that such corrective action will be taken, or until the granting agency terminates the grant.

(b) New obligations incurred by the grantee during the suspension period will not be allowed unless the granting agency expressly authorizes them in the notice of suspension or an amendment to it. Necessary and otherwise allowable costs which the grantee could not reasonably avoid during the suspension period will be allowed if they result from obligations properly incurred by the grantee before the effective date of the suspension and not in anticipation of suspension or termination. At the discretion of the granting agency, third-party in-kind contributions applicable to the suspension period may be allowed in satisfaction of cost sharing or matching requirements.

(c) Appropriate adjustments to payments under the suspended grant will be made either by withholding subsequent payments or by not allowing the grantee credit for disbursements made in payment of unauthorized obligations incurred during the suspension period.

§ 74.115 Termination.

(a) *Termination for cause.* The granting agency may terminate any grant in whole, or in part, at any time before the date of expiration, whenever it determines that the grantee has materially failed to comply with the terms of the grant. The granting agency shall promptly notify the grantee in writing of the determination and the reasons for the termination, together with the effective date.

(b) *Termination on other grounds.* Except as provided in paragraph (a) of this section, grants may be terminated in whole or in part only as follows:

(1) By the granting agency with the consent of the grantee, in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial terminations, the portion to be terminated, or

(2) By the grantee, upon written notification to the granting agency, setting forth the reasons for such termination, the effective date, and in the case of partial terminations, the portion to be terminated. However, if, in the case of a partial termination, the granting agency determines that the remaining portion of the grant will not accomplish the purposes for which the grant was made, the granting agency

may terminate the grant in its entirety under either paragraph (a) or paragraph (b)(1) of this section.

(c) *Termination settlements.* When a grant is terminated, the grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The granting agency shall allow full credit to the grantee for the Federal share of the noncancellable obligations properly incurred by the grantee prior to termination.

§ 74.116 Applicability to subgrants.

Grantees shall adhere to the same standards regarding closeout, suspension, and termination of subgrants as are prescribed in this subpart for granting agencies.

Subpart N—Forms for Applying for Grants

§ 74.120 Scope of subpart.

(a) This subpart prescribes forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying to HEW for grants. This subpart is not applicable, however, to mandatory or formula grant programs which do not require applicants to apply to HEW for funds on a project basis.

(b) This subpart permits granting agencies to prescribe the form of applications by nongovernmental organizations (including hospitals and institutions of higher education operated by a government), but prescribes the use of a standard facesheet for certain of these applications.

(c) This subpart applies only to applications for grants, and is not required to be applied by grantees in dealing with applicants for subgrants. However, grantees are encouraged not to adopt more detailed or burdensome application requirements for subgrants.

§ 74.121 Authorized forms and instructions for governmental organizations.

(a) In applying to HEW for grants, governments shall use only the forms specified in §§ 74.122 through 74.126, and such supplementary or other forms as may from time to time be prescribed by the granting agency with the approval of OGP.

(b) Governments will not be required to submit more than the original and two copies of their applications.

(c) Governments shall follow all applicable standard instructions promulgated by OMB for use in connection with the forms specified in §§ 74.122 through 74.126. Granting agencies may specify and describe the programs, functions, or activities that will be used to plan, budget, and evaluate the work under a grant. Other supplementary instructions may be issued only with the approval of OGP. For any form, the granting agency may shade out or instruct the applicant to disregard any line item that is not needed.

(d) When a government applies for additional funding (such as a continuation or supplemental award) or amends a previously submitted application, only the facesheet and any other affected pages need be submitted. Previously submitted pages whose information is still current need not be resubmitted.

§ 74.122 Preapplications for Federal Assistance for governmental organizations.

(a) When a preapplication is submitted by a government, the preapplication for Federal assistance form prescribed by OMB Circular A–102 shall be used. The purposes of preapplications shall be to:

(1) Establish communication between the applicant and the granting agency;

(2) Determine the applicant's eligibility;

(3) Determine how well the project can compete with similar applications from others in order to discourage proposals which have little or no chance for Federal funding before applicants incur significant expenditures for preparing an application.

(b) Preapplication shall be mandatory when the potential applicant is a government and the proposed project (1) is for construction, land acquisition, or land development, and (2) would require more than $100,000 of Federal funding. The granting agency may require preapplications regardless of the type of project and regardless of the estimated amount of Federal funding. In addition, any government may submit a preapplication even when not required by the granting agency.

§ 74.123 Notice of preapplication review action for governmental organizations.

The notice of preapplication review action form prescribed by attachment M of OMB Circular No. A–102 will be used by granting agencies to inform governmental applicants of the results of the review of the preapplications submitted to them. The granting agency will send a notice to the applicant ordinarily within 45 days of the receipt of the preapplication form. If the review cannot be made within 45 days, the applicant will be informed by letter as to when the review will be completed.

§ 74.124 Application for Federal assistance (nonconstruction programs) for governmental organizations.

The applicant for Federal assistance (nonconstruction programs) form prescribed by attachment M of OMB Circular No. A–102 shall be used by governments in applying for any grant to which this subpart is applicable except where a form specified in § 74.125 or § 74.126 is to be used.

§ 74.125 Application for Federal assistance (for construction programs) for governmental organizations.

The applicant for Federal assistance (for construction programs) form prescribed by attachment M of OMB Circular No. A–102 shall be used by governments in applying for any grant whose purpose is soley or primarily construction, land acquisition, or land development.

§ 74.126 Application for Federal assistance (short form) for governmental organizations.

The applicant for Federal assistance (short form) form prescribed by attachment M of OMB Circular No. A–102 shall be used by governments in applying for any single-purpose one-time grant of less than $10,000 not requiring clearinghouse review, an environmental impact statement, or the relocation of persons, businesses, or farms. Granting agencies may, at their discretion, authorize or prescribe this form for applications for larger amounts.

§ 74.127 Authorized forms and instructions for nongovernmental organizations.

Nongovernmental organizations shall use application forms and instructions prescribed by the granting agency, except that the facesheet of such applications shall be standard form 424 for grants under programs covered by attachment A, part I, of OMB Circular No. A–95.

Subpart O—Property

General

§ 74.130 Scope and applicability of this subpart.

(a) Except as explained in paragraphs (c), (d), and (e) of this section this subpart applies to real property, equipment, and supplies acquired with grant support. To be considered acquired with grant support, some or all of the property's acquisition cost must be a direct cost under the grant, a subgrant, or a cost-type contract and must be either borne by grant funds or counted toward satisfying a grant cost-sharing or matching requirement.

(b) This subpart also deals with inventions, patents, and copyrights arising out of activities assisted by a grant or subgrant.

(c) This subpart does not apply to—

(1) Property for which only depreciation or use allowances are charged;

(2) Property donated entirely as a third-party in-kind contribution (as defined in § 74.51); or

(3) Equipment or supplies acquired primarily for sale or rental rather than for use.

(d) Equipment or supplies acquired by a contractor under a grant or subgrant shall be subject to this subpart only if, by terms of the contract, title vests in the grantee or subgrantee.

(e) For research grants that are subject to an institutional cost-sharing agreement (see § 74.50(b)), real property, equipment, and supplies shall be subject to this subpart only if at least some part of the acquisition cost is borne as a direct cost by Federal grant funds.

§ 74.131 Prohibition against additional requirements.

Recipients may follow their own property management policies and procedures: *Provided,* They observe the requirements of this subpart. Awarding parties may not impose on recipients property requirements (including property reporting requirements) not authorize by this subpart, unless specifically required by Federal statutes or Executive Orders.

§ 74.132 Definitions.

As used in this subpart:

"Acquisition" of property includes purchase, construction, or fabrication of property, but does not include rental of property or alterations and renovations of real property.

"Acquisition cost" of an item of purchased equipment means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the equipment usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance shall be included in or excluded from the unit acquisition cost in accordance with the regular accounting practices of the organization purchasing the equipment. If the item is acquired by trading in another item and paying an additional amount, "acquisition cost" means the amount received for trade-in plus the additional outlay.

"Amount received for trade-in" of an item of equipment traded in for replacement equipment means the amount that would have been paid for the replacement equipment without a trade-in minus the amount paid with the trade-in. The term refers to the actual difference, not necessarily the trade-in value shown on an invoice.

"Equipment" means tangible personal property having a useful life of more than one year and an acquisition cost of $300 or more per unit except that organizations subject to Cost Accounting Standards Board (CASB) regulations may use the CASB standard of $500 or more per unit and useful life of two years. An organization may use its own definition of equipment: *Provided,* That such definition would at least include all tangible personal property as defined herein.

"Personal property" means property of any kind except real property. It may be tangible—having physical existence, or intangible—having no physical existence, such as patents, inventions, and copyrights.

"Real property" means land, including land improvements, structures and appurtenances thereto, but excluding movable machinery and equipment.

"Replacement equipment" means property acquired to take the place of other equipment. To qualify as replacement equipment, it must serve the same function as the equipment replaced and must be of the same nature or character, although not necessarily the same model, grade, or quality.

"Supplies" means all tangible personal property other than equipment.

§ 74.133 Title to real property, equipment, and supplies.

Subject to the obligations and conditions set forth in this subpart, title to real property, equipment, and supplies acquired under a grant or subgrant shall vest, upon acquisition, in the grantee or subgrantee respectively.

Real Property

§ 74.134 Real property.

Except as otherwise provided by federal statutes, real property to which this subpart applies shall be subject to the following requirements, in addition to any other requirements imposed by the terms of the grant:

(a) *Use.* The property shall be used for the originally authorized purpose as long as needed for that purpose. When no longer so needed, approval of the granting agency may be requested to use the property for other purposes. Use for other purposes shall be limited to:

(1) Projects or programs supported by other Federal grants or assistance agreements.

(2) Activities not supported by other Federal grants or assistance agreements but having, nevertheless, purposes consistent with those of the legislation under which the original grant was made.

(b) *Transfer of title.* Approval may be requested from the granting agency to transfer title to an eligible third party for continued use for authorized purposes in accordance with paragraph (a) of this section. If approval is permissable under Federal statutes and is given, the terms of the transfer shall provide that the transferee shall assume all the rights and obligations of the transferor set forth in this subpart or in other terms of the grant or subgrant.

(c) *Disposition.* When the real property is no longer to be used as provided in paragraphs (a) and (b) of this section, the disposition instructions of the granting agency shall be followed. Those instructions will provide for one of the following alternatives:

(1) The property shall be sold and the Federal Government shall be paid an amount computed by multiplying the Federal share of the property (see § 74.142) times the proceeds from sale (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). Proper sales procedures shall be used that provide for competition to the extent practicable and result in the highest possible return.

(2) The recipient shall have the option either of selling the property in accordance with paragraph (c)(1) of this section or of retaining title. If title is retained, the Federal Government shall be paid an amount computed by multiplying the market value of the property by the Federal share of the property.

(3) The recipient shall transfer the title to either the Federal Government or an eligible non-Federal party named by the granting agency. The grantee shall be entitled to be paid an amount computed by multiplying the market value of the property by the non-Federal share of the property. If the property belonged to a subgrantee, see § 74.143 for subgrantee's share.

Equipment and Supplies

§ 74.135 Exemptions for equipment and supplies subject to certain statutes.

(a) Some Federal statutes, in certain circumstances, permit title to equipment or supplies acquired with grant funds to vest in the recipient without further obligation to the Federal Government or on such terms and conditions as deemed appropriate. An example of such a statute is the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–224, which provides this authority for equipment and supplies purchased with the funds of grants (and Federal contracts and cooperative agreements) for the conduct of basic or applied scientific research at nonprofit institutions of higher education or at nonprofit organizations whose primary purpose is the conduct of scientific research.

(b) If equipment is subject to a statute of the kind described in paragraph (a) of this section, it shall be exempt from the requirements in the remaining sections of this subpart. However, an item of such equipment having a unit acquisition cost of $1,000 or more shall be subject to § 74.136, concerning rights to require transfer, and, while subject to such a right, to the rules on replacement in § 74.138.

(c) If supplies are subject to a statute of the kind described in paragraph (a) of this section, they shall be exempt from all provisions of the remainder of this subpart which would otherwise apply.

§ 74.136 Rights to require transfer of equipment.

(a) *HEW right.* For items of equipment having a unit acquisition cost of $1,000 or more, the granting agency shall have the right to require transfer of the equipment (including title) to the Federal Government or to an eligible non-Federal party named by the granting agency. This right will normally be exercised by HEW granting agencies only if the project or program for which the equipment was acquired is transferred from one grantee to another. The right shall be subject to the following conditions:

(1) In order for the granting agency to exercise the right, a specific notice that it is exercising the right or considering doing so must be issued no later than the 120th day after the end of HEW grant support for the project or program for which the equipment was acquired. Furthermore:

(i) If the equipment is eligible for the exemptions in § 74.135 and ceases to be needed for the project or program for which it was acquired while the project or program is still being performed by the recipient, the notice must have been received by the grantee while the equipment was still needed for that project or program.

(ii) If the equipment is not eligible for those exemptions, the notice must have been received by the grantee before other permissible disposition of the equipment took place in accordance with § 74.139.

(2) If the right is exercised, the grantee shall be entitled to be paid any reasonable, resulting shipping or storage costs incurred, plus an amount computed by multiplying the market value of the equipment by the non-Federal share of the equipment. (See §§ 74.142 and 74.143.)

(b) *Right of parties awarding subgrants.* When a grantee awards a subgrant, it may reserve for itself a right similar to that in paragraph (a) of this section for items of equipment having a unit acquisition cost of $1,000 or more which are acquired under that subgrant. Without the approval of the granting agency, the right may be exercised only if the project or program for which the equipment was acquired is transferred to another subgrantee and only for the purpose of transferring the equipment to the new subgrantee for continued use in the project or program.

(c) *Equipment lists.* If at any time an awarding party is considering exercising its right to require transfer of equipment, it may require the recipient to furnish it a listing of all items of equipment that are subject to the right. This will enable the awarding party to determine which items, if any, should be transferred.

§ 74.137 Use of equipment.

(a) *Basic rule.* Equipment which has not been transferred under § 74.136 shall be used by the recipient in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original project or program, the recipient shall use the equipment, if needed, in other projects or programs currently or previously sponsored by the Federal Government, in the following order of priority:

(1) Projects or programs currently or previously sponsored by the same granting agency.

(2) Projects or programs currently or previously sponsored by other Federal agencies.

(b) *Shared use.* If equipment is being used less than full time in the project or program for which it was originally acquired, the recipient shall make it available for use in other projects or programs currently or previously sponsored by the Federal Government: *Provided,* Such other use will not interfere with the work on the original project or program. First preference for such other use shall be given to other projects or programs sponsored by the same granting agency.

(c) *Use by other recipients.* When the recipient can no longer use the equipment as required by paragraph (a) of this section, it may voluntarily make the equipment available for use on projects or programs currently or previously sponsored by the Federal Government which the recipient is supporting through subgrants or through non-Federal grants. If the recipient is a subgrantee, it may also voluntarily make the equipment available for use on projects or programs currently or previously sponsored by the Federal Government which are being conducted or supported by the grantee.

(d) *Other uses.* Unless the granting agency provides otherwise, while equipment is being used as described in the preceding paragraphs of this section, it may also be used part time for other purposes. However, use as described in those paragraphs shall be given priority over other uses.

§ 74.138 Replacement of equipment.

(a) Equipment may be exchanged for replacement equipment if needed. The replacement may take place either through trade-in or through sale and application of the proceeds to the acquisition cost of the replacement equipment. In either case, the transaction must be one which a prudent person would make in like circumstances.

(b) If an additional outlay to acquire the replacement equipment is charged as a direct cost to either Federal funds or required cost-sharing or matching under a Federal award, the replacement equipment shall be subject to whatever property requirements or exemptions are applicable to that award. If the award is a grant from HEW, the full acquisition cost of the replacement equipment shall determine which provisions of this subpart apply.

(c) For any replacement not covered by paragraph (b) of this section, the provisions of this subpart applicable to the equipment replaced shall carry over to the replacement equipment. However, none of the provisions of this subpart shall carry over if (1) the Federal share of the equipment replaced was 10 percent or less or (2) the product of that share times the amount received for trade-in or sale is $100 or less.

§ 74.139 Disposition of equipment.

When original or replacement equipment is no longer to be used in projects or programs currently or previously sponsored by the Federal Government, disposition of the equipment shall be made as follows:

(a) *Equipment with a unit acquisition cost of less than $1,000 and equipment with no further use value.* The equipment may be retained, sold, or otherwise disposed of, with no further obligation to the Federal Government.

(b) *All other equipment.* (1) The equipment may be retained or sold, and the Federal Government shall have a right to an amount calculated by multiplying the current market value or the proceeds from sale by the Federal share of the equipment (see § 74.142). If part of the Federal share in the equipment came from an award under which the exemptions in § 74.135 were applicable, the amount due shall be reduced pro rata. In any case, if the equipment is sold, $100 or 10 percent of the total sales proceeds, whichever is greater, may be deducted and retained from the amount otherwise due for selling and handling expenses.

(2) If the grantee's project or program for which or under which the equipment was acquired is still receiving grant support from the same Federal program and if the granting agency approves, the net amount due may be used for allowable costs of that project or program. Otherwise, the net amount must be remitted to the granting agency by check.

§ 74.140 Equipment management requirements.

Procedures for managing equipment (including replacement equipment) until transfer, replacement, or disposition takes place shall, as a minimum, meet the following requirements:

(a) Property records shall be maintained accurately. (Retention and access requirements for these records are explained in Subpart D of this part.) For each item of equipment, the records shall include:

(1) A description of the equipment, including manufacturer's model number, if any.

(2) An identification number, such as the manufacturer's serial number.

(3) Identification of the grant under which the recipient acquired the equipment.

(4) The information needed to calculate the Federal share of the equipment. (See § 74.142.)

(5) Acquisition date and unit acquisition cost.

(6) Location, use, and condition of the equipment and the date the information was reported.

(7) All pertinent information on the ultimate transfer, replacement, or disposition of the equipment.

(b) A physical inventory of equipment shall be taken and the results reconciled with the property records at least once every 2 years to verify the existence, current utilization, and continued need for the equipment. A statistical sampling basis is acceptable. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the differences.

(c) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented.

(d) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(e) Where equipment is to be sold and the Federal Government is to have a right to part or all of the proceeds, selling procedures shall be established which will provide for competition to the extent practicable and result in the highest possible return.

§ 74.141 Supplies.

(a) If supplies exceeding $1,000 in total aggregate market value are left over upon termination or expiration of the grant or subgrant for which they were acquired and the supplies are not needed for any project or program currently or previously sponsored by the Federal Government, the grant shall be credited by an amount computed by multiplying the Federal share of the supplies times the current market value or, if the supplies are sold, the proceeds from sale. If the supplies are sold, 10 percent of the proceeds may be deducted and retained from the credit, for selling and handling expenses.

(b) For possible exemptions from this section, see § 74.135.

Federal Share of Real Property, Equipment, and Supplies

§ 74.142 Federal share of property.

Several sections of this subpart require a determination of the Federal (or non-Federal) share of real property, equipment, or supplies. In making such a determination, the following principles shall be observed:

(a) *General.* (1) Except as explained in the succeeding paragraphs of this section, the Federal share of the property shall be the same percentage as the Federal share of the acquiring party's total costs under the grant during the grant or subgrant year (or other funding period) to which the acquisition cost of the property was charged. For this purpose, "costs under the grant" means allowable costs which are either borne by the grant or counted towards satisfying a cost-sharing or matching requirement of the grant. Only costs are to be counted—not the value of third-party in-kind contributions. Moreover, if the property was acquired by a grantee that awarded subgrants, costs incurred by its subgrantees shall be included only to the extent borne by the subgrants. (For example, if a subgrantee incurred $200,000 of project costs, of which $150,000 was borne by the subgrant, only the $150,000 shall be included in the grantee's costs.)

(2) If the property is acquired by a subgrantee, the Federal share of the subgrantee's costs under the grant and hence of the property shall be calculated by multiplying the Federal share of the grantee's costs by the latter's share of the subgrantee's costs. For example, if the Federal share of a grantee's costs is 50 percent and the subgrant bears only 50 percent of a subgrantee's costs, then the Federal share of that subgrantee's costs (and of the property acquired by that subgrantee) is 25 percent.

(b) *Property acquired only partly under a grant.* (1) Sometimes only a part of the acquisition cost of an item of property is borne as a direct cost by the grant or counted as a direct cost towards a cost-sharing or matching requirement. The remainder might, for example, represent voluntary cost sharing or matching, or it might be charged to a different activity. Occasionally, the amount paid for the property is only a part of its value, and the remainder is donated as an in-kind contribution by the party that provided the property.

(2) To calculate the Federal share of such property, first determine the Federal share of the acquiring party's total costs under the grant, as explained in the paragraph (a) of this section. Then multiply that share by the percentage of the property's acquisition cost (or its market value, if the item was partly donated) which was borne as a direct cost by the grant or counted as a direct cost towards a cost-sharing or matching requirement.

(c) *Replacement equipment.* The Federal share of replacement equipment shall be calculated as follows:

(1) *Step 1.* Determine the Federal share (percentage) of the equipment replaced.

(2) *Step 2.* Determine the percentage of the replacement equipment's cost that was covered by the amount received for trade-in or the sales proceeds from the equipment replaced.

(3) *Step 3.* Multiply the step 1 percentage by the step 2 percentage.

(4) *Step 4.* If an additional outlay for the replacement equipment was charged as a direct cost either to HEW grant funds or to required cost-sharing or matching funds, calculate the Federal share attributable to that additional outlay as explained in paragraph (b)(2) of this section. Add that additional percentage to the step 3 percentage.

(d) *Institutional cost-sharing agreements.* If a grant is subject to an institutional cost-sharing agreement (see § 74.130(e)), the Federal share of property acquired under the grant shall be calculated as though there were no cost-sharing requirement applicable to the grant (that is, as if all the grantee's cost sharing were voluntary).

§ 74.143 Subgrantee's share of market value or sales proceeds.

Where this subpart requires a sharing of the market value or sales proceeds of property acquired under a subgrant, the non-Federal share shall be proportionally divided between the grantee and the subgrantee. The subgrantee shall be entitled to the amount it would have received or retained if the award to it had been made directly by the Federal Government. The remainder of the non-Federal share shall belong to the grantee.

Intangible Personal Property

§ 74.144 Inventions and patents.

HEW's regulations on inventions and patents arising out of activities assisted by a grant are set forth in parts 6 and 8 of this title.

§ 74.145 Copyrights.

(a) *Works under grants.* Unless otherwise provided by the terms of the grant, when copyrightable material is developed in the course of or under a grant, the grantee is free to copyright the material or permit others to do so.

(b) *Works under subgrants.* Unless otherwise provided by the terms of the grant or subgrant, when copyrightable material is developed in the course of or under a subgrant, the subgrantee is free to copyright the material or permit others to do so.

(c) *HEW rights.* If any copyrightable material is developed in the course of or under a HEW grant or subgrant, HEW shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for Federal Government purposes. A grantee awarding a subgrant may reserve a similar right for itself with respect to copyrightable material developed under that subgrant.

(d) *Exemption of student-developed works.* HEW awards training grants and other kinds of grants under which individuals are provided stipends or other financial assistance for the primary purpose of aiding them to further their education or training. Except as provided by the terms of the grant, copyrightable material developed by an individual or group of individuals in the course of education or training pursued with such assistance shall not be subject to the HEW right described in paragraph (c) of this section, unless the development of the material also receives other forms of support under the same or another HEW grant (such as a research grant).

Subpart P—Procurement Standards

§ 74.160 Scope of subpart; terminology.

(a) This subpart contains standards for use by recipients in establishing procedures for the procurement of supplies, equipment, construction, and other services whose cost is borne in whole or in part as a direct cost by Federal grant funds.

(b) No additional procurement standards or requirements shall be imposed by awarding parties upon recipients unless specifically required by Federal statutes or Executive Orders.

(c) As used in this subpart:

(1) "Formal advertising" refers to that procurement method which involves adequate purchase description, sealed bids, and public opening of bids.

(2) "Negotiation" refers to any method of procurement other than formal advertising.

§ 74.161 General.

(a) Recipients may use their own procurement policies: *Provided,* That procurements subject to this subpart are made in accordance with the standards in this subpart.

(b) The standards in this subpart do not relieve the recipient of the contractual responsibilities arising under its contracts. The recipient is the responsible authority, without recourse to HEW, regarding issues arising out of its procurements. This includes but is not limited to: Disputes, claims, protests of award, source evaluation, or other matters of a contractual nature. Matters concerning violation of law are to be referred to such local, State, or Federal authority as may have proper jurisdiction.

§ 74.162 Code of conduct.

(a) The recipient shall maintain a code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the awarding and administration of contracts that are subject to this subpart. The code or standards shall provide for disciplinary actions to be applied for violations of the code or standards by the recipient's officers, employees, or agents. For governmental recipients, such disciplinary actions are required only to the extent otherwise permissible under the Government's laws, rules, or regulations. To the extent permissible under its laws, rules, or regulations, the governmental recipient shall also provide for actions to be taken against contractors or their agents who wrongfully take part in a violation of the code or standards of conduct.

(b) The recipient's officers, employees or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or potential contractors. This is not intended to preclude bona-fide institutional fund-raising activities.

(c) No employee, officer, or agent of a nongovernmental recipient shall participate in the selection, award, or administration of a contract subject to this subpart where, to his or her knowledge, any of the following has a financial interest in that contract:

(1) The employee, officer, or agent;

(2) Any member of his or her immediate family;

(3) His or her partner;

(4) An organization in which any of the above is an officer, director, or employee;

(5) A person or organization with whom any of the above individuals is negotiating or has any arrangement concerning prospective employment.

§ 74.163 Free competition.

(a) All procurement transactions shall be conducted in a manner to provide, to the maximum extent practicable, open and free competition.

(b) The recipient should be alert to organizational conflicts of interest or noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In particular, a contractor that develops or drafts specifications, requirements, a statement of work, an invitation for bids or a request for proposals for a particular procurement by a nongovernmental recipient should be excluded from competing for that procurement except when, upon request of the recipient, the granting agency waives this requirement for a particular procurement.

(c) Solicitations shall clearly set forth all requirements that the bidder/offerer must fulfill in order for his bid/offer to be evaluated. Awards shall be made to the responsible bidder/offeror whose bid/offer is responsive to the solicitation and is most advantageous to the recipient, price and other factors considered. Factors such as discounts, transportation costs, and taxes may be considered in determining the lowest bid. Any and all bids/offers may be rejected when it is in the recipient's interest to do so, and, in the case of governmental recipients, such rejections are in accordance with the government's applicable law, rules, or regulations.

§ 74.164 Procedural requirements.

The recipient shall establish procurement procedures which provide for, as a minimum, the following:

(a) Proposed procurement actions shall follow a procedure to assure that unnecessary or duplicative items are not purchased. Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical, practical procurement.

(b) Solicitations for goods and services shall be based upon a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. "Brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement, and when so used the specific features of the named brand which must be met by bidders/offerors should be clearly specified.

(c) Where applicable, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)) shall be observed.

(d) Positive efforts shall be made by procuring parties to utilize small business and minority-owned business sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts subject to this subpart.[1]

(e) The type of procuring instruments used—e.g., fixed-price contracts, cost reimbursable contracts, purchase orders, incentive contracts—shall be determined by the recipient but must be appropriate for the particular procurement and for promoting the best interest of the grant project or program involved. The "cost-plus-a-percentage-of-cost" method of contracting shall not be used.

(f) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources.

(g) The terms of the grant may require that the following be submitted for prior approval of the granting agency if the aggregate expenditure is expected to exceed $5,000: (1) Any proposed sole source contract and (2) any contract which a nongovernmental recipient proposes to award after seeking competition but receiving only one bid or proposal.

(h) Nongovernmental recipients should make some form of price or cost analysis in connection with every negotiated procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost proposed by the offeror to determine reasonableness, allocability and allowability.

(i) Procurement records and files for purchases in excess of $10,000 shall include the following:

(1) Basis for contractor selection;

(2) Justification for lack of competition when competitive bids or offers are not obtained;

(3) Basis for award cost or price.

(j) A system for contract administration shall be maintained to ensure contractor conformance with terms, conditions and specifications of the contract, and to ensure adequate and timely followup of all purchases.

§ 74.165 Requirement for governments to use formal advertising.

(a) Except as provided in paragraph (b) of this section, in making procurements that are subject to this subpart, governmental recipients shall use formal advertising.

(b) Procurements may be negotiated if it is not practicable or feasible to use formal advertising. Generally, such procurements may be negotiated if one or more of the following conditions prevail:

(1) The public exigency will not permit the delay incident to advertising.

(2) The material or service to be procured is available from only one person or firm.

(3) The aggregate amount involved does not exceed $10,000.

(4) The contract is for personal or professional services, or for any service to be rendered by a university, college, or other educational institution.

(5) The material or services are to be procured and used outside the limits of the United States and its possessions.

(6) No acceptable bids have been received after formal advertising.

(7) The purchases are for highly perishable materials or medical supplies, for material or services where the prices are established by law, for technical items or equipment requiring standardization and interchangeability of parts with existing equipment, for experimental, developmental or research work, for supplies purchased for authorized resale, or for technical or specialized supplies requiring substantial initial investment for manufacture.

(8) Formal advertising is otherwise not practicable or feasible, and negotiation is authorized by applicable law, rules, or regulations.

(c) Notwithstanding the existence of circumstances justifying negotiation, competition shall be obtained to the maximum extent practicable.

(d) For every negotiated procurement in excess of $10,000 by a governmental recipient, written justification for the use of negotiation in lieu of formal advertising shall be included in the government's procurement records and files, in addition to the information required by § 74.164(i). The justification may be on a class basis, i.e., covering a group of related or similar contracts, or it may be on an individual contract basis.

§ 74.166 Contract provisions.

(a) *Scope.* This section contains requirements relating to provisions that must be included in contracts that are subject to this part. The requirements shall also apply to subcontracts of any tier under such contracts, and the term "contracts" in this section shall be construed as including subcontracts.

(b) *General.* All contracts shall contain sufficient provisions to define a sound and complete agreement.

(c) *Administrative remedies for violations.* Contracts in excess of $10,000 shall contain contractual provisions or conditions that will allow for administrative, contractual or legal remedies in instances in which contractors violate or breach contract terms, and provide for such remedial actions as appropriate.

(d) *Termination provisions.* Contracts in excess of $10,000 shall contain suitable provisions for termination by the party awarding the contract, including the manner by which termination will be effected and the basis for settlement. These contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

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[1] Advice and assistance regarding the use of small or minority businesses may be obtained from the following Federal organizations:

1. The Small Business Administration and its field offices.
2. The Office of Minority Business Enterprise, Department of Commerce.
3. The Office of Facilities Engineering, HEW and its regional offices (for assistance in identifying minority-owned firms interested in performing construction, alteration, or renovation work).
4. The Office for Civil Rights, HEW.
5. The Office of Grants and Procurement, HEW.

(e) *E.O. 11246.* Where applicable, construction contracts in excess of $10,000 shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

(f) *Copeland Act.* Contracts in excess of $2,000 for construction or repair shall include a provision for compliance with the Copeland "Anti-Kick-Back Act" (18 U.S.C. 874) as supplemented in Department of Labor regulation (29 CFR Part 3). All suspected or reported violations shall be reported to the granting agency by the grantee.

(g) *Davis-Bacon Act.* When required by the Federal legislation governing the grant program, all construction contracts in excess of $2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a–7) as supplemented by Department of Labor regulations (29 CFR Part 5). All suspected or reported violations shall be reported to the granting agency by the grantee.

(h) *Contract Work Hours and Safety Standards Act.* All contracts subject to the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) shall include a provision requiring the contractor to comply with the applicable sections of the act and the Department of Labor's supplementing regulations (29 CFR Parts 5 and 1926).

(i) *Inventions and patents.* Contracts which may give rise to inventions subject to parts 6 and 8 of this title shall include a provision requiring compliance with those parts.

(j) *Access to Records.* Contracts that are subject to Subpart D of this part shall include a provision reflecting § 74.24(c) on rights of access to the contractor's records.

(k) *Clean Air and Water Acts.* Contracts in excess of $100,000 shall contain provisions requiring compliance with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act as amended (42 U.S.C. 1857 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported in writing to the appropriate regional office of the Environmental Protection Agency, and a copy of the report shall be submitted to the granting agency. (See 40 CFR Part 15 for relevant regulations of the Environmental Protection Agency.)

Subpart Q—Cost Principles

§ 74.170 Scope of subpart.

This subpart identifies the principles to be used in determining costs applicable to grants, subgrants, and cost-type contracts under grants and subgrants.

§ 74.171 Governments.

The principles to be used in determining the allowable costs of activities conducted or administered by governments are in Appendix C to this part.

§ 74.172 Institutions of higher education.

(a) *Research and development.* The principles for determining the allowable costs of research and development work performed by institutions of higher education (other than for-profit institutions) are in part I of Appendix D to this part.

(b) *Training and other educational services.* The principles for determining the allowable costs of training and other educational services provided by institutions of higher education (other than for-profit institutions) are in part II of Appendix D to this part.

(c) *Other activities.* Appendix D to this part shall be used as a guide for determining the allowable costs of other activities conducted by institutions of higher education (other than for-profit institutions).

§ 74.173 Hospitals.

(a) *Research and development.* The principles for determining the allowable costs of research and development work performed by hospitals are in Appendix E to this part.

(b) *Other activities.* Appendix E to this part shall be used as a guide for determining the allowable costs of other activities conducted by hospitals.

§ 74.174 Other nonprofit organizations.

(a) *Nonconstruction awards.* Under nonconstruction awards, the principles for determining the allowable costs of activities conducted by nonprofit organizations other than institutions of higher education, hospitals, and governmental organizations are in Appendix F to this part.

(b) *Construction awards.* Appendix F to this part shall be used as a guide for determining the allowable costs of work under construction awards to nonprofit organizations (other than institutions of higher education, hospitals and governmental organizations).

§ 74.175 Subgrants and cost-type contracts.

(a) The cost principles applicable to a subgrantee or cost-type contractor under an HEW grant will not necessarily be the same as those applicable to the grantee. For example, where a State government awards a subgrant or cost-type contract to an institution of higher education, Appendix D to this part would apply to the costs incurred by the institution of higher education, even though Appendix C would apply to the costs incurred by the State.

(b) The principles to be used in determining the allowable costs of work performed by for-profit organizations (other than hospitals) under cost-type contracts awarded to them under HEW grants are in 41 CFR Subpart 1–15.2.

§ 74.176 Costs allowable with approval.

Each set of cost principles identifies certain costs that, in order to be allowable, must be approved by the granting agency. Other costs do not require approval. The following procedures govern approval of these costs.

(a) When costs are treated as indirect costs (or are allocated pursuant to a government-wide cost allocation plan), acceptance of the costs as part of the indirect cost rate or cost allocation plan shall constitute approval.

(b)(1) When the costs are treated as direct costs, they must be approved in advance by the awarding party.

(2) If the costs are specified in the budget, approval of the budget shall constitute approval of the costs.

(3) If the costs are not specified in the budget, or there is no approved budget, the recipient shall obtain specific prior approval in writing from the awarding party. For this purpose the prior approval procedures of § 74.102 shall be followed, except that for formula or mandatory grants, the granting agency's written approval may be signed by any authorized official of the granting agency.

(c) The awarding party may waive or conditionally waive the requirement for its approval of the costs. Such a waiver shall apply only to the requirement for approval. If, upon audit or otherwise, it is determined that the costs do not meet other requirements or tests for allowability specified by the applicable cost principles, such as reasonableness and necessity, the costs may be disallowed.

(d) In the case of subgrants and cost-type contracts, no approval shall be given which is inconsistent with the purpose or the terms of the Federal grant.

Appendix A [Reserved]

Appendix B [Reserved]

Appendix C—Principles for Determining Costs Applicable to Grants and Contracts With State and Local Governments

Part I—General

A. Purpose and Scope

1. *Objectives.* This appendix sets forth principles for determining the allowable costs of programs administered by State and local governments under grants from and contracts with the Federal Government. The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal and State or local participation in the financing of a particular grant. They are designed to provide that federally assisted programs bear their fair share of costs recognized under these principles, except where restricted or prohibited by law. No provision for profit or other increment above cost is intended.

2. *Policy guides.* The application of these principles is based on the fundamental premises that:

a. State and local governments are responsible for the efficient and effective administration of grant and contract programs through the application of sound management practices.

b. The grantee or contractor assumes the responsibility for seeing that federally assisted program funds have been expended and accounted for consistent with underlying agreements and program objectives.

c. Each grantee or contractor organization, in recognition of its own unique combination of staff facilities and experience, will have the primary responsibility for employing whatever form of organization and management techniques may be necessary to assure proper and efficient administration.

3. *Application.* These principles will be applied in determining costs incurred by State and local governments under Federal grants and cost reimbursement type contracts (including subgrants and subcontracts) except those with (a) publicly financed educational institutions subject to Appendix D to this part and (b) publicly owned hospitals and other providers of medical care subject to requirements of Appendix E to this part.

B. Definitions

1. *Approval or authorization of the grantor Federal agency* means documentation evidencing consent prior to incurring specific cost.

2. *Cost allocation plan* means the documentation identifying, accumulating, and distributing allowable costs under grants and contracts together with the allocation methods used.

3. *Cost,* as used herein, means cost as determined on a cash, accrual, or other basis acceptable to the Federal grantor agency as a discharge of the grantee's accountability for Federal funds.

4. *Cost objective* means a pool, center, or area established for the accumulation of cost. Such areas include organizational units, functions, objects or items of expense, as well as ultimate cost objectives including specific grants, projects, contracts, and other activities.

5. *Federal agency* means the Department of Health, Education, and Welfare.

6. Grant means an agreement between the Federal Government and a State or local government whereby the Federal Government provides funds or aid in kind to carry out specified programs, services, or activities. The principles and policies stated in this appendix as applicable to grants in general also apply to any federally sponsored cost reimbursement type of agreement performed by a State or local government, including contracts, subcontracts and subgrants.

7. *Grant program* means those activities and operations of the grantee which are necessary to carry out the purposes of the grant, including any portion of the program financed by the grantee.

8. *Grantee* means the department or agency of State or local government which is responsible for administration of the grant.

9. *Local unit* means any political subdivision of government below the State level.

10. *Other State or local agencies* means departments or agencies of the State or local unit which provide goods, facilities, and services to a grantee.

11. *Services,* as used herein, means goods and facilities, as well as services.

12. *Supporting services* means auxiliary functions necessary to sustain the direct effort involved in administering a grant program or an activity providing service to the grant program. These services may be centralized in the grantee department or in some other agency, and include procurement, payroll, personnel functions, maintenance and operation of space, data processing, accounting budgeting, auditing, mail and messenger service, and the like.

C. Basic Guidelines

1. *Factors affecting allowability of costs.* To be allowable under a grant program, costs must meet the following general criteria:

a. Be necessary and reasonable for proper and efficient administration of the grant program, be allocable thereto under these principles, and, except as specifically provided herein, not be a general expense required to carry out the overall responsibilities of State or local governments.

b. Be authorized or not prohibited under State or local laws or regulations.

c. Conform to any limitations or exclusions set forth in these principles, Federal laws, or other governing limitations as to types or amounts of cost items.

d. Be consistent with policies, regulations, and procedures that apply uniformly to both federally assisted and other activities of the unit of government of which the grantee is a part.

e. Be accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances.

f. Not be allocable to or included as a cost of any other federally financed program in either the current or a prior period.

g. Be net of all applicable credits.

2. *Allocable costs.* a. A cost is allocable to a particular cost objective to the extent of benefits received by such objective.

b. Any cost allocable to a particular grant or cost objective under the principles provided for in this appendix may not be shifted to other Federal grant programs to overcome fund deficiencies, avoid restrictions imposed by law or grant agreements, or for other reasons.

c. Where an allocation of joint cost will ultimately result in charges to a grant program, an allocation plan will be required as prescribed in section J.

3. *Applicable credits.* a. Applicable credits refer to those receipts or reduction of expenditure-type transactions which offset or reduce expense items allocable to grants as direct or indirect costs. Examples of such transactions are: purchase discounts; rebates or allowances; recoveries or indemnities on losses; sale of publications, equipment, and scrap; income from personal or incidental services; and adjustments of overpayments or erroneous charges.

b. Applicable credits may also arise when Federal funds are received or are available from sources other than the grant program involved to finance operations or capital items of the grantee. This includes costs arising from the use or depreciation of items donated or financed by the Federal Government to fulfill matching requirements under another grant program. These types of credits should likewise be used to reduce related expenditures in determining the rates or amounts applicable to a given grant.

D. Composition of Cost

1. *Total cost.* The total cost of a grant program is comprised of the allowable direct cost incident to its performance, plus its allocable portion of allowable indirect costs, less applicable credits.

2. *Classification of costs.* There is no universal rule for classifying certain costs as either direct or indirect under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the grant or other ultimate cost objective. It is essential therefore that each item of cost be treated consistently either as a direct or an indirect cost. Specific guides for determining direct and indirect costs allocable under grant programs are provided in the sections which follow.

E. Direct Costs

1. *General.* Direct costs are those that can be identified specifically with a particular cost objective. These costs may be charged directly to grants, contracts, or to other programs against which costs are finally lodged. Direct costs may also be charged to cost objectives used for the accumulation of costs pending distribution in due course to grants and other ultimate cost objectives.

2. *Application.* Typical direct costs chargeable to grant programs are:

a. Compensation of employees for the time and effort devoted specifically to the execution of grant programs.

b. Cost of materials acquired, consumed, or expended specifically for the purpose of the grant.

c. Equipment and other approved capital expenditures.

d. Other items of expense incurred specifically to carry out the grant agreement.

e. Services furnished specifically for the grant program by other agencies, provided such charges are consistent with criteria outlined in Section G of these principles.

F. Indirect Costs

1. *General.* Indirect costs are those (a) incurred for a common or joint purpose benefiting more than one cost objective, and (b) not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. The term "indirect costs," as used herein, applies to costs of this type originating in the grantee department, as well as those incurred by other departments in supplying goods, services, and facilities, to the grantee department. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect cost within a grantee department or in other agencies providing services to a grantee department. Indirect cost pools should be distributed to benefiting cost objectives on bases which will produce an equitable result in consideration or relative benefits derived.

2. *Grantee departmental indirect costs.* All grantee departmental indirect costs, including the various levels of supervision, are eligible for allocation to grant programs provided they meet the conditions set forth in this Appendix. In lieu of determining the actual amount of grantee departmental indirect cost allocable to a grant program, the following methods may be used:

a. *Predetermined fixed rates for indirect costs.* A predetermined fixed rate for computing indirect costs applicable to a grant may be negotiated annually in situations where the cost experience and other pertinent facts available are deemed sufficient to enable the contracting parties to reach an informed judgment (1) as to the probable level of indirect costs in the grantee department during the period to be covered by the negotiated rate, and (2) that the amount allowable under the predetermined rate would not exceed actual indirect cost.

b. *Negotiated lump sum for overhead.* A negotiated fixed amount in lieu of indirect costs may be appropriate under circumstances where the benefits derived from a grantee department's indirect services cannot be readily determined as in the case of small, self-contained or isolated activity. When this method is used, a determination should be made that the amount negotiated will be approximately the same as the actual indirect cost that may be incurred. Such amounts negotiated in lieu of indirect costs will be treated as an offset to total indirect expenses of the grantee department before allocation to remaining activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

3. *Limitation on indirect costs.* a. Federal grants may be subject to laws that limit the amount of indirect cost that may be allowed. Agencies that sponsor grants of this type will establish procedures which will assure that the amount actually allowed for indirect costs under each such grant does not exceed the maximum allowable under the statutory limitation or the amount otherwise allowable under this Appendix, whichever is the smaller.

b. When the amount allowable under a statutory limitation is less than the amount otherwise allocable as indirect costs under this Appendix, the amount not recoverable as indirect costs under a grant may not be shifted to another federally sponsored grant program or contract.

G. Cost Incurred by Agencies Other Than the Grantee

1. *General.* The cost of service provided by other agencies only may include allowable direct costs of the service plus a pro rata share of allowable supporting costs (section B.12.) and supervision directly required in performing the service, but not supervision of a general nature such as that provided by the head of a department and his staff assistants not directly involved in operations. However, supervision by the head of a department or agency whose sole function is providing the service furnished would be an eligible cost. Supporting costs include those furnished by other units of the supplying department or by other agencies.

2. *Alternative methods of determining indirect cost.* In lieu of determining actual indirect cost related to a particular service furnished by another agency, either of the following alternative methods may be used provided only one method is used for a specific service during the fiscal year involved.

a. *Standard indirect rate.* An amount equal to 10 percent of direct labor cost in providing the service performed by another State agency (excluding overtime, shift, or holiday premiums and fringe benefits) may be allowed in lieu of actual allowable indirect cost for that service.

b. *Predetermined fixed rate.* A predetermined fixed rate for indirect cost of the unit or activity providing service may be negotiated as set forth in section F.2.a.

H. Cost Incurred by Grantee Department for Others

1. *General.* The principles provided in section G. will also be used in determining the cost of services provided by the grantee department to another agency.

I. [Reserved]

J. Cost Allocation Plan

1. *General.* A plan for allocation of costs will be required to support the distribution of any joint costs related to the grant program. All costs included in the plan will be supported by formal accounting records which will substantiate the propriety of eventual charges.

2. *Requirements.* The allocation plan of the grantee department should cover all joint costs of the department as well as costs to be allocated under plans of other agencies or organizational unit which are to be included in the costs of federally sponsored programs. The cost allocation plans of all the agencies rendering services to the grantee department, to the extent feasible, should be presented in a single document. The allocation plan should contain, but not necessarily be limited to, the following:

a. The nature and extent of services provided and their relevance to the federally sponsored programs.

b. The items of expense to be included.

c. The methods to be used in distributing cost.

3. *Instructions for preparation of cost allocation plans.* The Department of Health, Education, and Welfare, in consultation with the other Federal agencies concerned, will be responsible for developing and issuing the instructions for use by State and local government grantees in preparation of cost allocation plans. This responsibility applies to both central support services at the State and local government level as well as indirect cost proposals of individual grantee departments.

4. *Negotiation and approval of indirect cost proposals for States.* a. The Department of Health, Education, and Welfare, in collaboration with the other Federal agencies concerned, will be responsible for negotiation, approval and audit of cost allocation plans, which will be submitted to it by the States. These plans will cover central support service costs of the State.

b. At the grantee department level in a State, a single Federal agency will have responsibility similar to that set forth in a. above for the negotiation, approval and audit of the indirect cost proposal. Cognizant Federal agencies have been designated for this purpose. Changes which may be required from time to time in agency assignments will be arranged by the Department of Health, Education, and Welfare in collaboration with the other interested agencies, and submitted to the Office of Management and Budget for final approval. A current list of agency assignments will be maintained by the Department of Health, Education, and Welfare.

c. Questions concerning the cost allocation plans approved under a. and b. above should be directed to the agency responsible for such approvals.

5. *Negotiation and approval of indirect cost proposals for local governments.* a. Cost allocation plans will be retained at the local government level for audit by a designated Federal agency except in those cases where that agency requests that cost allocation plans be submitted to it for negotiation and approval.

b. A list of cognizant Federal agencies assigned responsibility for negotiation, approval and audit of central support service cost allocation plans at the local government level is being developed. Changes which may be required from time to time in agency assignments will be arranged by the Department of Health, Education, and Welfare in collaboration with the other interested agencies, and submitted to the Office of Management and Budget for final approval. A current list of agency assignments will be maintained by the Department of Health, Education, and Welfare.

c. At the grantee department level of local governments, the Federal agency with the predominant interest in the work of the grantee department will be responsible for necessary negotiation, approval and audit of the indirect cost proposal.

6. *Resolution of problems.* To the extent that problems are encountered among the Federal agencies in connection with 4. and 5. above, the Office of Management and Budget will lend assistance as required.

Part II—Standards for Selected Items of Cost

A. Purpose and Applicability

1. *Objective.* This part provides standards for determining the allowability of selected items of cost.

2. *Application.* These standards will apply irrespective of whether a particular item of cost is treated as direct or indirect cost. Failure to mention a particular item of cost in the standards is not intended to imply that it is either allowable or unallowable, rather determination of allowability in each case should be based on the treatment of standards provided for similar or related items of cost. The allowability of the selected items of cost is subject to the general policies and principles stated in Part I of this appendix.

B. Allowable Costs

1. *Accounting.* The cost of establishing and maintaining accounting and other information systems required for the management of grant programs is allowable. This includes cost incurred by central service agencies for these purposes. The cost of maintaining central accounting records required for overall State or local government purposes, such as appropriation and fund accounts by the Treasurer, Comptroller, or similar officials, is considered to be a general expense of government and is not allowable.

2. *Advertising.* Advertising media includes newspapers, magazines, radio, and television programs, direct mail, trade papers, and the like. The advertising costs allowable are those which are solely for:

a. Recruitment of personnel required for the grant program.

b. Solicitation of bids for the procurement of goods and services required.

c. Disposal of scrap or surplus materials acquired in the performance of the grant agreement.

d. Other purposes specifically provided for in the grant agreement.

3. *Advisory councils.* Costs incurred by State advisory councils or committees established pursuant to Federal requirements to carry out grant programs are allowable. The cost of like organizations is allowable when provided for in the grant agreement.

4. *Audit service.* The cost of audits necessary for the administration and management of functions related to grant programs is allowable.

5. *Bonding.* Costs of premiums on bonds covering employees who handle grantee agency funds are allowable.

6. *Budgeting.* Costs incurred for the development, preparation, presentation, and execution of budgets are allowable. Costs for services of a central budget office are generally not allowable since these are costs of general government. However, where employees of the central budget office actively participate in the grantee agency's budget process, the cost of identifiable services is allowable.

7. *Building lease management.* The administrative cost for lease management which includes review of lease proposals, maintenance of a list of available property for lease, and related activities is allowable.

8. *Central stores.* The cost of maintaining and operating a central stores organization for supplies, equipment, and materials used either directly or indirectly for grant programs is allowable.

9. *Communications.* Communication costs incurred for telephone calls or service, telegraph, teletype service, wide area telephone service (WATS), centrex, telpak (tie lines), postage, messenger service and similar expenses are allowable.

10. *Compensation for personal services*—a. *General.* Compensation for personal services includes all remuneration, paid currently or accrued, for services rendered during the period of performance under the grant agreement, including but not necessarily limited to wages, salaries, and supplementary compensation and benefits (section B.13.). The costs of such compensation are allowable to the extent that total compensation for individual employees: (1) is reasonable for the services rendered, (2) follows an appointment made in accordance with State or local government laws and rules and which meets Federal merit system or other requirements, where applicable, and (3) is determined and supported as provided in b. below. Compensation for employees engaged in federally assisted activities will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the State or local government. In cases where the kinds of employees required for the federally assisted activities are not found in the other activities of the State or local government, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the employing government competes for the kind of employees involved. Compensation surveys providing data representative of the labor market involved will be an acceptable basis for evaluating reasonableness.

b. *Payroll and distribution* of time. Amounts charged to grant programs for personal services, regardless of whether treated as direct or indirect costs, will be based on payrolls documented and approved in accordance with generally accepted practice of the State or local agency. Payrolls must be supported by time and attendance or equivalent records for individual employees. Salaries and wages of employees chargeable to more than one grant program or other cost objective will be supported by appropriate time distribution records. The method used should produce an equitable distribution of time and effort.

11. *Depreciation and use allowances.* a. Grantees may be compensated for the use of buildings, capital improvements, and equipment through use allowances or depreciation. Use allowances are the means of providing compensation in lieu of depreciation or other equivalent costs. However, a combination of the two methods may not be used in connection with a single class of fixed assets.

b. The computation of depreciation or use allowance will be based on acquisition cost. Where actual cost records have not been maintained, a reasonable estimate of the original acquisition cost may be used in the computation. The computation will exclude the cost or any portion of the cost of buildings and equipment donated or borne directly or indirectly by the Federal Government through charges to Federal grant programs or otherwise, irrespective of where title was originally vested or where it presently resides. In addition, the computation will also exclude the cost of land. Depreciation or a use allowance on idle or excess facilities is not allowable, except when specifically authorized by the grantor Federal agency.

c. Where the depreciation method is followed, adequate property records must be maintained, and any generally accepted method of computing depreciation may be used. However, the method of computing depreciation must be consistently applied for any specific asset or class of assets for all affected federally sponsored programs and must result in equitable charges considering the extent of the use of the assets for the benefit of such programs.

d. In lieu of depreciation, a use allowance for buildings and improvements may be computed at an annual rate not exceeding 2 percent of acquisition cost. The use allowance for equipment (excluding items properly capitalized as building cost) will be computed at an annual rate not exceeding 6⅔ percent of acquisition cost of usable equipment.

e. No depreciation or use charge may be allowed on any assets that would be considered as fully depreciated: *provided, however,* That reasonable use charges may be negotiated for any such assets if warranted after taking into consideration the cost of the facility or item involved, the estimated useful life remaining at time of negotiation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the facility or item for the purpose contemplated.

12. *Disbursing service.* The cost of disbursing grant program funds by the Treasurer or other designated officer is allowable. Disbursing services cover the processing of checks or warrants, from preparation to redemption, including the necessary records of accountability and reconciliation of such records with related cash accounts.

13. *Employee fringe benefits.* Costs identified under a. and b. below are allowable to the extent that total compensation for employees is reasonable as defined in section B.10.

a. Employee benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, court leave, military leave, and the like, if they are: (1) provided pursuant to an approved leave system, and (2) the cost thereof is equitably allocated to all related activities, including grant programs.

b. Employee benefits in the form of employers' contribution or expenses for social security, employees' life and health insurance plans, unemployment insurance coverage, workmen's compensation insurance, pension plans, severance pay, and the like, provided such benefits are granted under approved plans and are distributed equitably to grant programs and to other activities.

14. *Employee morale, health, and welfare costs.* The costs of health of first-aid clinics and/or infirmaries, recreational facilities, employees' counseling services, employee information publications, and any related expenses incurred in accordance with general State or local policy are allowable. Income generated from any of these activities will be offset against expenses.

15. *Exhibits.* Costs of exhibits relating specifically to the grant programs are allowable.

16. *Legal expenses.* The cost of legal expenses required in the administration of grant programs is allowable. Legal services furnished by the chief legal officer of a State or local government or his staff solely for the purpose of discharging his general responsibilities as legal officer are unallowable. Legal expenses for the prosecution of claims against the Federal Government are unallowable.

17. *Maintenance and repair.* Costs incurred for necessary maintenance, repair, or upkeep of property which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable.

18. *Materials and supplies.* The cost of materials and supplies necessary to carry out the grant programs is allowable. Purchases made specifically for the grant program should be charged thereto at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the grantee. Withdrawals from general stores or stockrooms should be charged at cost under any recognized method of pricing consistently applied. Incoming transportation charges are a proper part of material cost.

19. *Memberships, subscriptions and professional activities*—a. *Memberships.* The cost of membership in civic, business, technical and professional organizations is allowable provided: (1) the benefit from the membership is related to the grant program, (2) the expenditure is for agency membership, (3) the cost of the membership is reasonably related to the value of the services or benefits received, and (4) the expenditure is not for membership in an organization which devotes a substantial part of its activities to influencing legislation.

b. *Reference material.* The cost of books and subscriptions to civic, business, professional, and technical periodicals is allowable when related to the grant program.

c. *Meetings and conferences.* Costs are allowable when the primary purpose of the meeting is the dissemination of technical information relating to the grant program and they are consistent with regular practices followed for other activities of the grantee.

20. *Motor pools.* The costs of a service organization which provides automobiles to user grantee agencies at a mileage or fixed rate and/or provides vehicle maintenance, inspection and repair services are allowable.

21. *Payroll preparation.* The cost of preparing payrolls and maintaining necessary related wage records is allowable.

22. *Personnel administration.* Costs for the recruitment, examination, certification, classification, training, establishment of pay standards, and related activities for grant programs, are allowable.

23. *Printing and reproduction.* Costs for printing and reproduction services necessary for grant administration, including but not limited to forms, reports, manuals, and informational literature, are allowable. Publication costs of reports or other media relating to grant program accomplishments or results are allowable when provided for in the grant agreement.

24. *Procurement service.* The cost of procurement service, including solicitation of bids, preparation and award of contracts, and all phases of contract administration in providing goods, facilities and services for grant programs, is allowable.

25. *Taxes.* In general, taxes or payments in lieu of taxes which the grantee agency is legally required to pay are allowable.

26. *Training and education.* The cost of in-service training, customarily provided for employee development which directly or indirectly benefits grant programs, is allowable. Out-of-service training involving extended periods of time is allowable only when specifically authorized by the grantor agency.

27. *Transportation.* Costs incurred for freight, cartage, express, postage, and other transportation costs relating either to goods purchased, delivered, or moved from one location to another, are allowable.

28. *Travel.* Travel costs are allowable for expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business incident to a grant program. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip, and results in charges consistent with those normally allowed in like circumstances in nonfederally sponsored activities. The difference in cost between first-class air accommodations and less-than-first-class air accommodations is unallowable except when less-than-first-class air accommodations are not reasonably available.

C. Costs Allowable With Approval of Grantor Agency

1. *Automatic data processing.* The cost of data processing services to grant programs is allowable. This cost may include rental of equipment or depreciation on grantee-owned equipment. The acquisition of equipment, whether by outright purchase, rental-purchase agreement or other method of purchase, is allowable only upon specific prior approval of the grantor Federal agency as provided under the selected item for capital expenditures.

2. *Building space and related facilities.* The cost of space in privately or publicly owned buildings used for the benefit of the grant program is allowable subject to the conditions stated below. The total cost of space, whether in a privately or publicly owned building, may not exceed the rental cost of comparable space and facilities in a privately owned building in the same locality. The cost of space procured for grant program usage may not be charged to the program for periods of nonoccupancy, without authorization of the grantor Federal agency.

a. *Rental cost.* The rental cost of space in a privately owned building is allowable.

b. *Maintenance and operation.* The costs of utilities, insurance, security, janitorial services, elevator service, upkeep of grounds, normal repairs, and alterations and the like, are allowable to the extent they are not otherwise included in rental or other charges for space.

c. *Rearrangements and alterations.* Cost incurred for rearrangement and alteration of facilities required specifically for the grant program or those that materially increase the value or useful life of the facilities (section C.3.) are allowable when specifically approved by the grantor agency.

d. *Depreciation and use allowances on publicly owned buildings.* These costs are allowable as provided in section B.11.

e. *Occupancy of space under rental-purchase or a lease with option-to-purchase agreement.* The cost of space procured under such arragngements is allowable when specifically approved by the Federal grantor agency.

3. *Capital expenditures.* The cost of facilities, equipment, other capital assets, and repairs which materially increase the value or useful life of capital assets is allowable when such procurement is specifically approved by the Federal grantor agency. When assets acquired with Federal grant funds are (a) sold, (b) no longer available for use in a federally sponsored program, or (c) used for purposes not authorized by the grantor agency, the Federal grantor agency's equity in the asset will be refunded in the same proportion as Federal participation in its cost. In case any assets are traded on new items, only the net cost of the newly acquired assets is allowable.

4. *Insurance and indemnification.* a. Cost of insurance required, or approved and maintained pursuant to the grant agreement, is allowable.

b. Cost of other insurance in connection with the general conduct of activities is allowable subject to the following limitations:

(1) Types and extent and cost of coverage will be in accordance with general State or local government policy and sound business practice.

(2) Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal Government property are unallowable except to the extent that the grantor agency has specifically required or approved such costs.

c. Contributions to a reserve for a self-insurance program approved by the Federal grantor agency are allowable to the extent that the type of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks.

d. Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise) are unallowable unless expressly provided for in the grant agreement. However, costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not covered by insurance, such as spoilage, breakage and disappearance of small hand tools which occur in the ordinary course of operations, are allowable.

e. *Indemnification* includes securing the grantee against liabilities to third persons and other losses not compensated by insurance or otherwise. The Government is obligated to indemnify the grantee only to the extent expressly provided for in the grant agreement, except as provided in d above.

5. *Management studies.* The cost of management studies to improve the effectiveness and efficiency of grant management for ongoing programs is allowable except that the cost of studies performed by agencies other than the grantee department or outside consultants is allowable only when authorized by the Federal grantor agency.

6. *Preagreement costs.* Costs incurred prior to the effective date of the grant or contract, whether or not they would have been allowable thereunder if incurred after such date, are allowable when specifically provided for in the grant agreement.

7. *Professional services.* Cost of professional services rendered by individuals or organizations not a part of the grantee department is allowable subject to such prior authorization as may be required by the Federal grantor agency.

8. *Proposal costs.* Costs of preparing proposals on potential Federal Government grant agreements are allowable when specifically provided for in the grant agreement.

D. Unallowable Costs

1. *Bad debts.* Any losses arising from uncollectible accounts and other claims, and related costs, are unallowable.

2. *Contingencies.* Contributions to a contingency reserve or any similar provision for unforeseen events are unallowable.

3. *Contributions and donations.* Unallowable.

4. *Entertainment.* Costs of amusements, social activities, and incidental costs relating thereto, such as meals, beverages, lodgings, rentals, transportation, and gratuities, are unallowable.

5. *Fines and penalties.* Costs resulting from violations of, or failure to comply with, Federal, State, and local laws and regulations are unallowable.

6. *Governor's expenses.* The salaries and expenses of the office of the Governor of a State or the chief executive of a political subdivision are considered a cost of general State or local government and are unallowable.

7. *Interest and other financial costs.* Interest on borrowings (however represented), bond discounts, cost of financing and refinancing operations, and legal and professional fees paid in connection therewith, are unallowable except when authorized by Federal legislation.

8. *Legislative expenses.* Salaries and other expenses of the State legislature or similar local governmental bodies such as county supervisors, city councils, school boards, etc., whether incurred for purposes of legislation or executive direction, are unallowable.

9. *Underrecovery of costs under grant agreements.* Any excess of cost over the Federal contribution under one grant agreement is unallowable under other grant agreements.

Appendix D

Part I—Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts With Educational Institutions

A. Purpose and Scope

1. *Objectives.* This appendix provides principles for determining the costs applicable to research and development work performed by educational institutions under grants from and contracts with the Federal Government. These principles are confined to the subject of cost determination and make no attempt to identify the circumstances or dictate the extent of agency and institutional participation in the financing of a particular research or development project. The principles are designed to provide recognition of the full allocated costs of such research work under generally accepted accounting principles. No provision for profit or other increment above cost is intended.

2. *Policy guides.* The successful application of these principles requires development of mutual understanding between representatives of universities and of the Federal Government as to their scope, implementation, and interpretation. It is recognized that—

a. The arrangements for agency and institutional participation in the financing of a research and development project are properly subject to negotiation between the agency and the institution concerned in accordance with such Government-wide criteria as may be applicable.

b. Each college and university, possessing its own unique combination of staff, facilities, and experience, should be encouraged to conduct research in a manner consonant with its own academic philosophies and institutional objectives.

c. Each institution, in the fulfillment of its obligations, should employ sound management practices.

d. The application of the principles established herein should require no significant changes in the generally accepted accounting practices of colleges and universities and standards herein provided on a consistent basis. Where wide variations exist in the treatment of a given cost item among institutions, the reasonableness and equitableness of such treatments will be fully considered during the rate negotiations and audit.

3. *Application.* The Department of Health, Education, and Welfare, will apply these principles and related policy guides in determining the costs incurred for such work under any type of research and development agreement. These principles should also be used as a guide in the pricing of fixed-price contracts or lump sum agreements.

B. Definition of Terms

1. *Organized research* means all research activities of an institution that are separately budgeted and accounted for.

2. *Departmental research* means research activities that are not separately budgeted and accounted for. Such research work, which includes all research activities not encompassed under the term "organized research," is regarded for purposes of this document as a part of the instructional activities of the institution.

3. *Research agreement* means any valid arrangement to perform federally sponsored research, including grants, cost-reimbursement type contracts, cost-reimbursement type subcontracts, and fixed-price contracts and subcontracts for research.

4. *Other institutional activities* means all organized activities of an institution not directly related to the instruction and research functions, such as residence halls, dining halls, student hospitals, student unions, intercollegiate athletics, bookstores, faculty housing, student apartments, guest houses, chapels, theaters, public museums, and other similar activities or auxiliary enterprises. Also included under this definition is any other category of cost treated as "unallowable," provided such category of cost identifies a function or activity to which a portion of the institution's indirect costs (as defined in section E.1.) are properly allocable.

5. *Apportionment* means the process by which the indirect costs of the institution are assigned as between (a) instruction and research, and (b) other institutional activities.

6. *Allocation* means the process by which the indirect costs apportioned to instruction and research are assigned as between (a) organized research, and (b) instruction, including departmental research.

7. *Stipulated salary support* is a fixed or a stated dollar amount of the salary of professorial or other professional staff involved in the conduct of research which a Government agency agrees in advance to reimburse an educational institution as a part of sponsored research costs.

8. *Federal agency* or sponsoring agency means the Department of Health, Education and Welfare.

C. Basic Considerations

1. *Composition of total costs.* The cost of a research agreement is comprised of the allowable direct costs incident to its performance, plus the allocable portion of the allowable indirect costs of the institution, less applicable credits as described in section C.5.

2. *Factors affecting allowability of costs.* The tests of allowability of costs under these principles are: (a) they must be reasonable; (b) they must be allocable to research agreements under the standards and methods provided herein; (c) they must be accorded consistent treatment through application of those generally accepted accounting

principles appropriate to the circumstances; and (d) they must conform to any limitations or exclusions set forth in these principles or in the research agreement as to types or amounts of cost items.

3. *Reasonable costs.* A cost may be considered reasonable if the nature of the goods or services acquired or applied, and the amount involved therefor, reflect the action that a prudent person would have taken under the circumstances prevailing at the time the decision to incur the cost was made. Major considerations involved in the determination of the reasonableness of a cost are: (a) whether or not the cost is of a type generally recognized as necessary for the operation of the institution or the performance of the research agreement; (b) the restraints or requirements imposed by such factors as arm's-length bargaining, Federal and State laws and regulations, and research agreement terms and conditions; (c) whether or not the individuals concerned acted with due prudence in the circumstances, considering their responsibilities to the institution, its employees, its students, the Government, and the public at large; and (d) the extent to which the actions taken with respect to the incurrence of the cost are consistent with established institutional policies and practices applicable to the work of the institution generally, including Government research.

4. *Allocable costs.* a. A cost is allocable to a particular cost objective (i.e., a specific function, project, research agreement, department, or the like) if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable to a research agreement if it is incurred solely to advance the work under the research agreement; or it benefits both the research agreement and other work of the institution in proportions that can be approximated through use of reasonable methods; or it is necessary to the overall operation of the institution and, in the light of the standards provided in this appendix is deemed to be assignable in part to organized research. Where the purchase of equipment or other capital items is specifically authorized under a research agreement, the amounts thus authorized for such purchases are allocable to the research agreement regardless of the use that may subsequently be made of the equipment or other capital items involved.

b. Any costs allocable to a particular research agreement under the standards provided in this appendix may not be shifted to other research agreements in order to meet deficiencies caused by overruns or other fund considerations, to avoid restrictions imposed by law or by terms of the research agreement, or for other reasons of convenience.

5. *Applicable credits.* a. The term applicable credits refers to those receipt or negative expenditure types of transactions which operate to offset or reduce expense items that are allocable to research agreements as direct or indirect costs. Typical examples of such transactions are: purchase discounts, rebates, or allowances; recoveries or indemnities on losses; sales of scrap or incidental services; and adjustments of overpayments or erroneous charges.

b. In some instances, the amounts received from the Federal Government to finance institutional activities or service operations should be treated as applicable credits. Specifically, the concept of netting such credit items against related expenditures should be applied by the institution in determining the rates or amounts to be charged to Government research for services rendered whenever the facilities or other resources used in providing such services have been financed directly, in whole or in part, by Federal funds. (See sections F.6., J.10.b., and J.37. for areas of potential application in the matter of direct Federal financing.)

6. *Costs incurred by State and local governments.* Costs incurred or paid by State or local governments in behalf of educational institutions for certain personnel benefit programs such as pension plans, FICA, and any other costs specifically disbursed in behalf of and in direct benefit to the institutions, are allowable costs of such institutions whether or not these costs are recorded in the accounting records of such institutions, subject to the following:

a. Such costs meet the requirements of sections C.1. through C.5.

b. Such costs are properly supported by cost allocation plans in accordance with Appendix C to this part.

c. Such costs are not otherwise borne directly or indirectly by the Federal Government.

D. Direct Costs

1. *General.* Direct costs are those costs which can be identified specifically with a particular research project, an instructional activity or any other institutional activity or which can be directly assigned to such activities relatively easily with a high degree of accuracy.

2. *Application to research agreements.* Identifiable benefit to the research work rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect costs of research agreements. Typical transactions chargeable to a research agreement as direct costs are the compensation of employees for performance of work under the research agreement, including related staff benefit and pension plan costs to the extent that such items are consistently treated by the educational institution as direct rather than indirect costs; the costs of materials consumed or expended in the performance of such work; and other items of expense incurred for the research agreement, including extraordinary utility consumption. The cost of materials supplied from stock or services rendered by specialized facilities or other institutional service operations may be included as direct costs of research agreements provided such items are consistently treated by the institution as direct rather than indirect costs and are charged under a recognized method of costing or pricing designed to recover only actual costs and conforming to generally accepted cost accounting practices consistently followed by the institution.

E. Indirect Costs

1. *General.* Indirect costs are those that have been incurred for common or joint objectives and therefore cannot be identified specifically with a particular research project, an instructional activity or any other institutional activity. At educational institutions such costs normally are classified under the following functional categories: general administration and general expenses; research administration expenses; operation and maintenance expenses; library expenses; and departmental administration expenses.

2. *Criteria for distribution—a. Base period.* A base period for distribution of indirect costs is the period during which such costs are incurred and accumulated for distribution to work performed within that period. The base period normally should coincide with the fiscal year established by the institution, but in any event the base period should be so selected as to avoid inequities in the distribution of costs.

b. *Need for cost groupings.* The overall objective of the allocation and apportionment process is to distribute the indirect costs described in section F to organized research, instruction, and other activities in reasonable proportions consistent with the nature and extent of the use of the institution's resources by research personnel, academic staff, students, and other personnel or organizations. In order to achieve this objective, it may be necessary to provide for selective distribution by establishing separate groupings of cost within one or more of the functional categories of indirect costs referred to in section E.1. In general, the cost groupings established within a functional category should constitute, in each case, a pool of those items of expense that are considered to be of like character in terms of their relative contribution to (or degree of remoteness from) the particular cost objectives to which distribution is appropriate. Cost groupings should be established considering the general guides provided in c. below. Each such pool or cost grouping should then be distributed individually to the appertaining cost objectives, using the distribution base or method most appropriate in the light of the guides set out in d. below.

c. *General considerations on cost groupings.* The extent to which separate cost groupings and selective distribution would be appropriate at an institution is a matter of judgment to be determined on a case-by-case basis. Typical situations which may warrant the establishment of two or more separate cost groups (based on account classification or analysis) within a functional category include but are not limited to the following:

(1) Where certain items or categories of expense relate solely to one of the three major divisions of the institution (instruction, organized research or other institutional activities) or to any two but not the third, such expenses should be set aside as a separate cost grouping for direct assignment or selective distribution in accordance with the guides provided in b. above and d. below.

(2) Where any types of expense ordinarily treated as general administration and general expenses or departmental administration expenses are charged to research agreements

as direct costs, the similar type expenses applicable to other activities of the institution must, through separate cost groupings, be excluded from the indirect costs allocable to those research agreements and included in the direct cost of other activities for cost allocation purposes.

(3) Where it is determined that certain expenses are for the support of a service unit or facility whose output is susceptible of measurement on a workload or other quantitative basis, such expenses should be set aside as a separate cost grouping for distribution on such basis to organized research and other activities at the institution or within the department.

(4) Where organized activities (including identifiable segments of organized research as well as the activities cited in section B.4.) provide their own purchasing, personnel administration, building maintenance or similar service, the distribution of general administration and general expenses or operation and maintenance expenses to such activities should be accomplished through cost groupings which include only that portion of central indirect costs (such as for overall management) which are properly allocable to such activities.

(5) Where the institution elects to treat as indirect charges the cost of the pension plan and other staff benefits, such costs should be set aside as a separate cost grouping for selective distribution to appertaining cost objectives, including organized research.

(6) The number of separate cost groupings within a functional category should be held within practical limits, after taking into consideration the materiality of the amounts involved and the degree of precision attainable through less selective methods of distribution.

d. *Selection of distribution method.* (1) Actual conditions must be taken into account in selecting the method or base to be used in distributing to applicable cost objectives the expenses assembled under each of the individual cost groupings established as indicated under b. above. Where a distribution can be made by assignment of a cost grouping directly to the area benefited, the distribution should be made in that manner. Where the expenses under a cost grouping are more general in nature, the distribution to appertaining cost objectives should be made through use of a selected base which will produce results that are equitable to both the Government and the institution. In general, any cost element or cost-related factor associated with the institution's work is potentially adaptable for use as a distribution base provided (a) it can readily be expressed in terms of dollars or other quantitative measure (total direct expenditures, direct salaries, man-hours applied, square feet utilized, hours of usage, number of documents processed, population served, and the like); and (b) it is common to the appertaining cost objectives during the base period.

(2) Results of cost analysis studies may be used when they result in more accurate and equitable distribution of costs. Such cost analysis studies may take into consideration weighting factors, population, or space occupied if they produce equitable results. Cost analysis studies, however, should (a) be appropriately documented in sufficient detail for subsequent review by the cognizant Federal agency, (b) distribute the indirect costs to the appertaining cost objectives in accord with the relative benefits derived, (c) be conducted to fairly reflect the true conditions of the activity and to cover representative transactions for a reasonable period of time, (d) be performed specifically at the institution at which the results are to be used, and (e) be updated periodically and used consistently. Any assumptions made in the study will be sufficiently supported. The use of cost analysis studies and periodic changes in the method of cost distribution must be fully justified.

(3) The essential consideration in selection of the distribution base in each instance is that it be the one best suited for assigning the pool of costs to appertaining cost objectives in accord with the relative benefits derived; the traceable cause and effect relationship; or logic and reason, where neither benefit nor cause and effect relationship is determinable.

3. *Administration of limitations on allowances for research costs.* Research agreements may be subject to statutory or administrative policies that limit the allowance of research costs. When the maximum amount allowable under a statutory limitation or the terms of a research agreement is less than the amount otherwise reimbursable under this Appendix, the amount not recoverable under that research agreement may not be charged to other research agreements.

F. Identification and Assignment of Indirect Costs

1. *General administration and general expenses.* a. The expenses under this heading are those that have been incurred for the general executive and administrative offices of educational institutions and other expenses of a general character which do not relate solely to any major division of the institution; i.e., solely to (1) instruction, (2) organized research, or (3) other institutional activities. The general administration and general expense category should also include the staff benefit and pension plan costs applicable to the salaries and wages included therein, an appropriate share of the costs of the operation and maintenance of the physical plant, and charges representing use allowances and/or depreciation applicable to the buildings and equipment utilized in performing the functions represented thereunder.

b. The expenses included in this category may be apportioned and allocated on the basis of total expenditures exclusive of capital expenditures in situations where the results of the distribution made on this basis are deemed to be equitable both to the Government and the institution; otherwise the distribution of general administration and general expenses should be made through use of selected bases applied to separate cost groupings established within this category of expenses in accordance with the guides set out in section E.2.d.

2. *Research administration expenses.* a. The expenses under this heading are those that have been incurred by a separate organization or identifiable administrative unit established solely to administer the research activity, including such functions as contract administration, security, purchasing, personnel administration, and editing and publishing of research reports. They include the salaries and expenses of the head of such research organization, his assistants, and their immediate secretarial staff together with the salaries and expenses of personnel engaged in supporting activities maintained by the research organization, such as stock rooms, stenographic pools, and the like. The salaries of members of the professional staff whose appointments or assignments involve the performance of such administrative work may also be included to the extent that the portion so charged to research administration is supported as required by section J.7. The research administration expense category should also include the staff benefit and pension plan costs applicable to the salaries and wages included therein, an appropriate share of the costs of the operation and maintenance of the physical plant, and charges representing use allowance and/or depreciation applicable to the buildings and equipment utilized in performing the functions represented thereunder.

b. The expenses included in this category should be allocated to organized research and, where necessary, to departmental research or to any other benefiting activities on any basis reflecting the proportion fairly applicable to each. (See section E.2.d.)

3. *Operation and maintenance expenses.* a. The expenses under this heading are those that have been incurred by a central service organization or at the departmental level for the administration, supervision, operation, maintenance, preservation, and protection of the institution's physical plant. They include expenses normally incurred for such items as janitorial and utility services; repairs and ordinary or normal alterations of buildings, furniture and equipment; and care of grounds and maintenance and operation of buildings and other plant facilities. The operation and maintenance expense category should also include the staff benefit and pension plan costs applicable to the salaries and wages included therein, and charges representing use allowance and/or depreciation applicable to the buildings and equipment utilized in performing the functions represented thereunder.

b. The expenses included in this category should be apportioned and allocated to applicable cost objectives in a manner consistent with the guides provided in section E.2. on a basis that gives primary emphasis to space utilization. The allocations and apportionments should be developed as follows: (1) where actual space and related cost records are available or can readily be developed and maintained without significant change in the accounting practices, the amount distributed should be based on such records; (2) where the space and related cost records maintained are not sufficient for purposes of the foregoing, a reasonable estimate of the proportion of total space assigned to the various cost objectives normally will suffice as a means for effecting distribution of the amounts of operation and maintenance expenses involved; or (3) where it can be demonstrated that an area or volume of space basis of allocation is impractical or inequitable, other bases may be used provided consideration is given to the use of facilities by research personnel and others, including students.

4. *Library expenses.* a. The expenses under this heading are those that have been incurred for the operation of the library, including the costs of books and library materials purchased for the library, less any items of library income that qualify as applicable credits under section C.5. The library expense category should also include the staff benefit and pension plan costs applicable to the salaries and wages included therein, an appropriate share of the costs of the operation and maintenance of the physical plant, and charges representing the allowances and/or depreciation applicable to the buildings and equipment utilized in the performance of the functions represented thereunder. Costs incurred in the purchases of rare books (museum-type books) with no research value should not be allocated to Government-sponsored research.

b. The expenses included in this category should be allocated on the basis of population including students and other users. Where the results of the distribution made on this basis are deemed to be inequitable to the Government or the institution, the distribution should then be made on a selective basis in accordance with the guides set out in section E.2. Such selective distribution should be made through use of reasonable methods which give adequate recognition to the utilization of the library attributable to faculty, research personnel, students and others. The method used will be based on data developed periodically on the respective institution's experience for representative periods.

5. *Departmental administration expenses.* a. The expenses under this heading are those that have been incurred in academic deans' offices, academic departments and organized research units such as institutes, study centers and research centers for administrative and supporting services which benefit common or joint departmental activities or objectives. They include the salaries, and expenses of deans or heads, or associate deans or heads, of colleges, schools, departments, divisions, or organized research units, and their administrative staffs together with the salaries and expenses of personnel engaged in supporting activities maintained by the department, such as stockrooms, stenographic pools, and the like, provided such supporting services cannot be directly identified with a specific research project, with an instructional activity or with any other institutional activity. The salaries of other members of the professional staff whose appointments or assignments involve the performance of such administrative work may also be included to the extent that the portion so charged to departmental administration expenses is supported as required by section J.7. The departmental administration expense category should also include the staff benefit and pension plan costs applicable to the salaries and wages included therein, an appropriate share of the costs of the operation and maintenance of the physical plant, and charges representing use allowances and/or depreciation applicable to the buildings and equipment utilized in performing the functions represented thereunder.

b. The distribution of departmental administration expenses should be made through use of selected bases applied to cost groupings established within this category of expenses in accordance with the guides set out in section E.2.d.

6. *Setoff for indirect expenses otherwise provided for by the Government.* a. The items to be accumulated under this heading are the reimbursements and other receipts from the Federal Government which are used by the institution to support directly, in whole or in part, any of the administrative or service (indirect) activities described in the foregoing (sections F.1. through F.5.). They include any amounts thus applied to such activities which may have been received pursuant to an institutional base grant or any similar contractual arrangement with the Federal Government other than a research agreement as herein defined (section B.3).

b. The sum of the items in this group shall be treated as a credit to the total indirect cost pool before it is apportioned to organized research and to other activities. Such setoff shall be made prior to the determination of the indirect cost rate or rates as provided in section G.

G. Determination and Application of Indirect Cost Rate or Rates

1. *Indirect cost pools.* a. Subject to b. below, indirect costs allocated to organized research should be treated as a common pool, and the costs in such common pool should then be distributed to individual research agreements benefiting therefrom on a single rate basis.

b. In some instances a single rate basis for use across the board on all Government research at an institution may not be appropriate, since it would not take into account those different environmental factors which may affect substantially the indirect costs applicable to a particular segment of Government research at the institution. For this purpose, a particular segment of Government research may be that performed under a single research agreement or it may consist of research under a group of research agreements performed in a common environment. The environmental factors are not limited to the physical location of the work. Other important factors are the level of the administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. Where a particular segment of Government research is performed within an environment which appears to generate a significantly different level of indirect costs, provision should be made for a separate indirect cost pool applicable to such work. The separate indirect cost pool should be developed during the course of the regular distribution process, and the separate indirect cost rate resulting therefrom should be utilized provided it is determined that (1) such indirect cost rate differs significantly from that which would have obtained under a. above, and (2) the volume of research work to which such rate would apply is material in relation to other Government research at the institution.

2. *The distribution base.* Indirect costs allocated to organized research should be distributed to applicable research agreements on the basis of direct salaries and wages. For this purpose, an indirect cost rate should be determined for each of the separate indirect cost pools developed pursuant to section G.1. The rate in each case should be stated as the percentage which the amount of the particular indirect cost pool is of the total direct salaries and wages of all research agreements identified with such pool. For the purpose of establishing an indirect cost rate, direct salaries and wages may include that portion contributed to the research by the institution for cost sharing or other purposes. Bases other than salaries and wages may be used provided it can be demonstrated that they produce more equitable results.

3. *Negotiated lump sum for indirect costs.* A negotiated fixed amount in lieu of indirect costs may be appropriate for self-contained, off-campus, or primarily subcontracted research activities where the benefits derived from an institution's indirect services cannot be readily determined. Such amount negotiated in lieu of indirect costs will be treated as an offset to total indirect expenses before apportionment to instruction, organized research, and other institutional activities. The base on which such remaining expenses are allocated should be approximately adjusted.

4. *Predetermined fixed rates for indirect costs.* Public Law 87–638 (76 Stat. 437) authorizes the use of predetermined fixed rates in determining the indirect costs applicable under research agreements with educational institutions. The stated objectives of the law are to simplify the administration of cost-type research and development contracts (including grants) with educational institutions, to facilitate the preparation of their budgets, and to permit more expeditious closeout of such contracts when the work is completed. In view of the potential advantages offered by this procedure, consideration should be given to the negotiation of predetermined fixed rates for indirect costs in those situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties involved to reach an informed judgment as to the probable level of indirect costs during the ensuing accounting period.

5. *Negotiated fixed rates and carryforward provisions.* When a fixed rate is negotiated in advance for a fiscal year (or other time period), the over- or under-recovery for that year may be included as an adjustment to the indirect cost for the next rate negotiation. When the rate is negotiated before the carryforward adjustment is determined due to the delay in audit, the carryforward may be applied to the next subsequent rate negotiation. When such adjustments are to be made, each fixed rate negotiated in advance for a given period will be computed by applying the expected indirect costs allocable to Government research for the forecast period plus or minus the carryforward

adjustment (over- or under-recovery) from the prior period, to the forecast distribution base. Unrecovered amounts under lump-sum agreements or cost-sharing provisions of prior years shall not be carried forward for consideration in the new rate negotiation. There must, however, be an advance understanding in each case between the institution and the cognizant Federal agency as to whether these differences will be considered in the rate negotiation rather than making the determination after the differences are known. Further, institutions electing to use this carryforward provision may not subsequently change without prior approval of the cognizant Federal agency. In the event that an institution returns to a postdetermined rate, any over- or under-recovery during the period in which negotiated fixed rates and carryforward provisions were followed will be included in the subsequent postdetermined rates. Where multiple rates are used, the same procedure will be applicable for determining each rate. This procedure also applies to rates established for grants and contracts for training and other educational services, but does not apply to cost-type research agreements covering work performed in wholly or partially Government-owned facilities.

H. Simplified Method for Small Institutions

1. *General.* a. Where the total direct cost of all federally supported work under research and educational service agreements at an institution does not exceed $1 million in a fiscal year (excluding direct payments by the institution to participants under educational service agreements for stipends, support, and similar costs requiring little, if any, indirect cost support), the use of the abbreviated procedure described in 2., below, may be used in determining allowable indirect costs. Under this abbreviated procedure, the institution's most recent annual financial report and immediately available supporting information, with salaries and wages segregated from other costs, will be utilized as a basis for determining the indirect cost rate applicable both to federally supported research and educational service agreements.

b. The rigid formula approach provided under this abbreviated procedure should not be used where it produces results which appear inequitable to the Government or the institution. In any such case, indirect costs should be determined through use of the regular procedure.

2. *Abbreviated procedure.* a. Establish the total amount of salaries and wages paid to all employees of the institution.

b. Establish an indirect cost pool consisting of the expenditures (exclusive of capital items and other costs specifically identified as unallowable) which customarily are classified under the following titles or their equivalents:

(1) General administration and general expenses (exclusive of costs of student administration and services, student aid, student activities, and scholarships).

(2) Operation and maintenance of physical plant.

(3) Library.

(4) Department administration expenses, which will be computed as 20 percent of the salaries and expenses of deans and heads of departments.

In those cases where expenditures classified under 2.b.(1) and 2.b.(2) have previously been allocated to other institutional activities, they may be included in the indirect cost pool. The total amount of salaries and wages included in the indirect cost pool must be separately identified.

c. Establish a salary and wage distribution base, determined by deducting from the total of salaries and wages as established under 2.a. the amount of salaries and wages included under 2.b.

d. Establish the indirect cost rate, determined by dividing the amount in the indirect cost pool 2.b. by the amount of the distribution base 2.c.

e. Apply the indirect cost rate established to direct salaries and wages for individual agreements to determine the amount of indirect costs allocable to such agreements.

I. [Reserved]

J. General Standards for Selected Items of Cost

Sections J.1. through J.46. provide standards to be applied in establishing the allowability of certain items involved in determining cost. These standards should apply irrespective of whether a particular item of cost is properly treated as direct cost or indirect cost. Failure to mention a particular item of cost in the standards is not intended to imply that it is either allowable or unallowable; rather determination as to allowability in each case should be based on the treatment or standards provided for similar or related items of cost. In case of discrepancy between the provisions of a specific research agreement and the applicable standards provided, the provisions of the research agreement should govern.

1. *Advertising costs.* The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television programs, direct mail, exhibits, and the like. The only advertising costs allowable are those which are solely for: (a) The recruitment of personnel required for the performance by the institution of obligations arising under the research agreement, when considered in conjunction with all other recruitment costs, as set forth in J.32; (b) the procurement of scarce items for the performance of the research agreement; or (c) the disposal of scrap or surplus materials acquired in the performance of the research agreement. Costs of this nature, if incurred for more than one research agreement or for both research agreement work and other work of the institution, are allowable to the extent that the principles in sections D and E are observed.

2. *Bad debts.* Any losses, whether actual or estimated arising from uncollectible accounts and other claims, related collections costs, and related legal costs, are unallowable.

3. *Capital expenditures.* The costs of equipment, buildings, and repairs which materially increase the value or useful life of buildings or equipment, are unallowable except as provided for in the research agreement. Government funds shall not be used for the acquisition of land, or any interest therein, except with the specific prior approval of the sponsoring agency.

4. *Civil defense costs.* Civil defense costs are those incurred in planning for, and the protection of life and property against, the possible effects of enemy attack. Reasonable costs of civil defense measures (including costs in excess of normal plant pro- tection costs, first-aid training and supplies, firefighting training, posting of additional exit notices and directions, and other approved civil defense measures) undertaken on the institution's premises pursuant to suggestions or requirements of civil defense authorities are allowable when distributed to all activities of the institution. Capital expenditures for civil defense purposes will not be allowed, but a use allowance or depreciation may be permitted in accordance with provisions set forth in section J.10. Costs of local civil defense projects not on the institution's premises are unallowable.

5. *Commencement and convocation costs.* Costs incurred for commencements and convocations apply only to instruction and therefore are not allocable to research agreements, either as direct costs or indirect costs.

6. *Communication costs.* Costs incurred for telephone services, local and long-distance telephone calls, telegrams, radiograms, postage and the like, are allowable.

7. *Compensation for personal services*—a. *General.* Compensation for personal services covers all remuneration paid currently or accured to the institution for services of employees rendered during the period of performance under Government research agreements. Such remuneration includes salaries, wages, staff benefits (see section J.39.), and pension plan costs (see section J.23.). The costs of such remuneration are allowable to the extent that the total compensation to individual employees is reasonable for the services rendered and conforms to the established policy of the institution consistently applied, and provided that the charges for work performed directly on Government research agreements and for other work allocable as indirect costs to organized research are determined and supported as hereinafter provided.

b. *Payroll distribution.* Amounts charged to organized research for personal services, except stipulated salary support, regardless of whether treated as direct costs or allocated as indirect costs, will be based on institutional payrolls which have been approved and documented in accordance with generally accepted institutional practices. Support for direct and indirect allocations of personal service costs to (1) instruction, (2) organized research, and (3) indirect activities as defined in section E.1., or (4) other institutional activities as defined in section B.4., will be provided as described in c., d., e., and f., below.

c. *Stipulated salary support.* As an alternative to payroll distribution, stipulated salary support amounts may be provided in the research agreement for professorial staff, any part of whose compensation is chargeable to Government-sponsored research. Stipulated salary support may also be provided for any other professionals who are engaged part time in sponsored research and part time in other work. The stipulated salary support for an individual will be determined by the Government and the educational institution during the proposal and award process on the basis of considered judgment as to the monetary value of the contribution which the individual is expected to make to the research project. This judgment will take into account any cost sharing by the institution and such other factors as the extent of the investigator's planned participation in the project and his ability to perform as planned in the light of his other commitments. It will be necessary for those who review research proposals to obtain information on the total academic year salary of the faculty members involved; the other research projects or proposals for which salary is allocated; and any other duties they may have such as teaching assignments, administrative assignments, number of graduate students for which they are responsible, or other institutional activities. Stipulated amounts for an individual must not per se result in increasing his official salary from the institution.

d. *Direct charges for personal services under payroll distribution.* The direct cost charged to organized research for the personal services of professorial and professional staff, exclusive of those whose salaries are stipulated in the research agreement, will be based on institutional payroll systems. Such institutional payroll systems must be supported by either: (1) an adequate appointment and workload distribution system accompanied by monthly reviews performed by responsible officials and a reporting of any significant changes in workload distribution of each professor or professional staff member, or (2) a monthly after-the-fact certification system which will require the individual investigators, deans, departmental chairmen or supervisors having first-hand knowledge of the services performed on each research agreement to report the distribution of effort. Reported changes will be incorporated during the accounting period into the payroll distribution system and into the accounting records. Direct charges for salaries and wages of nonprofessionals will be supported by time and attendance and payroll distribution records.

e. *Direct charges for personal services under stipulated salaries.* The amounts stipulated for salary support will be treated as direct costs. The stipulated salary for the academic year will be prorated equally over the duration of the grant or contract period during the academic year, unless other arrangements have been made in the grant or contract instrument. No time or effort reporting will be required to support these amounts. Special provision for summer salaries, or for a particular "off period" if other than summer, will be required. The research agreements will state that any research covered by summer salary support must be carried out during the summer, not during the academic year, and at locations approved in advance in writing by the granting agency. The certification required in section K will attest to this requirement as well as all others in a given research agreement. Stipulated salary support remains fixed during the funding period of the grant or contract and will be costed at the rate described above unless there is a significant change in performance. For example, a significant change in performance would exist if the faculty member (1) was ill for an extended period, (2) took sabbatical leave to devote effort to duties unrelated to his research, or (3) was required to increase substantially his teaching assignments, administrative duties, or responsibility for more research projects. In the latter event, it will be the responsibility of the educational institution to reduce the charges to the research agreement proportionately or seek an appropriate amendment. In the case of those covered by stipulated salary support, the auditors are no longer required to review the precise accuracy of time or effort devoted to research projects. Rather, their reviews should include steps to determine on a sample basis that an institution is not reimbursed for more than 100 percent of each faculty member's salary and that the portion of each faculty member's salary charged to Government-sponsored research is reasonable in view of his university workload and other commitments. The stipulated salary method may also be agreed upon for that portion of a professional's salary that represents cost sharing by the institution.

f. *Indirect personal services costs.* Allowable indirect personal services costs will be supported by the educational institution's accounting system maintained in accordance with generally accepted institutional practices. Where a comprehensive accounting system does not exist, the institution should make periodic surveys no less frequently than annually to support the indirect personal services costs for inclusion in the overhead pool. Such supporting documentation must be retained for subsequent review by Government officials.

g. *General guidance for charging personal services.* Budget estimates on a monthly, quarterly, semester, or yearly basis do not qualify as support for charges to federally sponsored research projects and should not be used unless confirmed after the fact. Charges to research agreements may include reasonable amounts for activities contributing and intimately related to work under the agreement, such as preparing and delivering special lectures about specific aspects of the ongoing research, writing research reports and articles, participating in appropriate research seminars, consulting with colleagues and graduate students with respect to related research, and attending appropriate scientific meetings and conferences. In no case should charges be made to federally sponsored research projects for lecturing or preparing for formal courses listed in the catalog and offered for degree credit, or for committee or administrative work related to university business.

h. *Nonuniversity professional activities.* A university must not alter or waive university-wide policies and practices dealing with the permissible extent of professional services over and above those traditionally performed without extra university compensation, unless such arrangements are specifically authorized by the sponsoring agency. Where univesity-wide policies do not adequately define the permissible extent of consultantship or other nonuniversity activities undertaken for extra pay, the Government may require that the effort of professional staff working under research agreements be allocated as between (1) university activities, and (2) nonuniversity professional activities. If the sponsoring agency should consider the extent of nonuniversity professional effort excessive, appropriate arrangements governing compensation will be negotiated on a case-by-case basis.

i. *Salary rates for academic year.* Charges for work performed on Government research by faculty members during the academic year will be based on the individual faculty member's regular compensation for the continuous period which, under the practice of the institution concerned, constitutes the basis of his salary. Charges for work performed on research agreements during all or any portion of such period would be allowable at the base salary rate. In no event will the charge to research agreements, irrespective of the basis of computation, exceed the proportionate share of the base salary for that period, and any extra compensation above the base salary for work on Government research during such period would be unallowable. This principle applies to all members of the faculty at an institution. Since intrauniversity consulting is assumed to be undertaken as a university obligation requiring no compensation in addition to full-time base salary, the principle also applies to those who function as consultants or otherwise contribute to a research agreement conducted by another faculty member of the same institution. However, in unusual cases where consultation is across departmental lines or involves a separate or remote operation, and the work performed by the consultant is in addition to his regular departmental load, any charges for such work representing extra compensation above the base salary are allowable provided such consulting arrangement is specifically provided for in the research agreement or approved in writing by the sponsoring agency.

j. *Salary rates for periods outside the academic year.* Charges for work performed by faculty members on Government research during the summer months or other periods not included in the base salary period will be determined for each faculty member at a monthly rate not in excess of that which would be applicable under his base salary and will be limited to charges made in accordance with other subsections of J.7.

k. *Salary rates for part-time faculty.* Charges for work performed on Government research by a faculty member having only part-time appointment for teaching will be determined at a rate not in excess of that for which he is regularly paid for his part-time teaching assignments. Example: An institution pays $5,000 to a faculty member for half-time teaching during the academic year. He devoted one-half of his remaining time (25 percent of his total available time) to Government research. Thus his additional compensation, chargeable by the institution to Government research agreements, would be one-half of $5,000 or $2,500.

8. *Contingency provisions.* Contributions to a contingency reserve or any similar provision made for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening, are unallowable.

9. *Deans of faculty and graduate schools.* The salaries and expenses of deans of faculty and graduate schools, or their equivalents, and their staffs, are allowable.

10. *Depreciation and use allowances.* a. Institutions may be compensated for the use of buildings, capital improvements, and usable equipment on hand through use allowances or depreciation. Use allowances are the means of providing such compensation when depreciation or other equivalent costs are not considered. However, a combination of the two methods may not be used in connection with a single class of fixed assets.

b. Due consideration will be given to Government-furnished facilities utilized by the institution when computing use allowances and/or depreciation if the Government-furnished facilities are material in amount. Computation of the use allowance and/or depreciation will exclude both the cost or any portion of the cost of buildings and equipment borne by or donated by the Federal Government, irrespective of where title was originally vested or where it presently resides and, secondly, the cost of grounds. Capital expenditures for land improvements (paved areas, fences, streets, sidewalks, utility conduits, and similar improvements not already included in the cost of buildings) are allowable provided the systematic amortization of such capital expenditures has been provided, based on reasonable determinations of the probable useful lives of the individual items involved, and the share allocated to organized research is developed from the amount thus amortized for the base period involved. Amortization methods once used should not be changed for a given building or equipment unless approved in advance by the cognizant Federal agency.

c. Where the use allowance method is followed, the use allowance for buildings and improvements will be computed at an annual rate not exceeding 2 percent of acquisition cost. The use allowance for equipment will be computed at an annual rate not exceeding 6⅔ percent of acquisition cost of usable and needed equipment in those cases where the institution maintains current records with respect to such equipment on hand. Where the institution's records reflect only the cost (actual or estimated) of the original complement of equipment, the use allowance will be computed at an annual rate not exceeding 10 percent of such cost. Original complement for this purpose means the complement of equipment initially placed in buildings to perform the functions currently being performed in such buildings; however, where a permanent change in the function of a building takes place, a redetermination of the original complement of equipment may be made at that time to establish a new original complement. In those cases where no equipment records are maintained, the institution will justify a reasonable estimate of the acquisition cost of usable and needed equipment which may be used to compute the use allowance at an annual rate not exceeding 6⅔ percent of such estimate.

d. Where the depreciation method is followed, adequate property record must be maintained and periodic inventory (a statistical sampling basis is acceptable) must be taken to insure that properties for which depreciation is charged do exist and are needed. The period of useful service (service life) established in each case for usable capital assets must be determined on a realistic basis which takes into consideration such factors as type of construction, nature of the equipment used, technological developments in the particular research area, and the renewal and replacement policies followed for the individual items or classes of assets involved. Where the depreciation method is introduced for application to assets acquired in prior years, the annual charges therefrom must not exceed the amounts that would have resulted had the depreciation method been in effect from the date of acquisition of such assets.

e. Where an institution elects to go to a depreciation basis for a particular class of assets, no depreciation, rental or use charge may be allowed on any such assets that, under d. above, would be viewed as fully depreciated provided, however, that reasonable use charges may be negotiated for any such assets if warranted after taking into consideration the cost of the facility or item involved, the estimated useful life remaining at time of negotiation, the actual replacement policy followed in the light of service lives used for calculating depreciation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the facility or item for the purpose contemplated.

11. *Employee morale, health, and welfare costs and credits.* The costs of house publications, health or first-aid clinics and/or infirmaries, recreational activities, employees' counseling services, and other expenses incurred in accordance with the institution's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale, and employee-performance, are allowable. Such costs will be equitably apportioned to all activities of the institution. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably set over to employee welfare organizations.

12. *Entertainment costs.* Costs incurred for amusement, social activities, entertainment, and any items relating thereto, such as meals, lodging, rentals, transportation, and gratuities, are unallowable.

13. *Equipment and other facilities.* The costs of permanent equipment or other facilities are allowable where such purchases are approved by the sponsoring agency concerned or provided for by the terms of the research agreement. Total expenditures for permanent equipment may not exceed 125 percent of the amount allotted for the permanent equipment category by the sponsoring agency (through an approved budget or other document) except with approval. The term "permanent equipment" shall mean an item of property which has an acquisition cost of $200 or more and has an expected service life of one year or more.

a. *General purpose equipment.* Approval must be obtained to acquire with Government funds any general purpose permanent equipment, i.e., any items which are usable for activities of the institution other than research, such as office equipment and furnishings, air conditioning, reproduction, or printing equipment, motor vehicles, etc., or any automatic data processing equipment.

b. *Research equipment.* Approval must be obtained to acquire with Government funds any item of permanent research equipment costing $1,000 or more.

14. *Fines and penalties.* Costs resulting from violations of, or failure of the institution to comply with, Federal, State, and local laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of the research agreement or instructions in writing from the contracting officer.

15. *Insurance and indemnification.* a. Costs of insurance required or approved, and maintained, pursuant to the research agreement, are allowable.

b. Costs of other insurance maintained by the institution in connection with the general conduct of its activities, are allowable subject to the following limitations: (1) types and extent and cost of coverage must be in accordance with sound institutional practice; (2) costs of insurance or of any contributions to any reserve covering the risk of loss of or damage to Government-owned property are unallowable except to the extent that the Government has specifically required or approved such costs; and (3) costs of insurance on the lives of officers or trustees are unallowable except where such insurance is part of an employee plan which is not unduly restricted.

c. Contributions to a reserve for an approved self-insurance program are allowable to the extent that the types of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks.

d. Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise) are unallowable unless expressly provided for in the research agreement, except that costs incurred because of losses not covered under existing deductible clauses for insurance coverage provided in keeping with sound management practice as well as minor losses not covered by insurance, such as spoilage, breakage, and disappearance of small hand tools, which occur in the ordinary course of operations, are allowable.

e. Indemnification includes securing the institution against liabilities to third persons and other losses not compensated by insurance or otherwise. The Government is obligated to indemnify the institution only to the extent expressly provided for in the research agreement, except as provided in d. above.

16. *Interest, fund raising, and investment management costs.* a. Costs incurred for

interest on borrowed capital or temporary use of endowment funds, however represented, are unallowable.

b. Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions, are not allowable under Government research agreements.

c. Costs of investment counsel and staff and similar expenses incurred solely to enhance income from investments are not allowable under Government research agreements.

d. Costs related to the physical custody and control of monies and securities are allowable.

17. *Labor relations costs.* Costs incurred in maintaining satisfactory relations between the institution and its employees, including costs of labor management committees, employees' publications, and other related activities, are allowable.

18. *Losses on other research agreements or contracts.* Any excess of costs over income under any other research agreement or contract of any nature is unallowable. This includes, but is not limited to, the institution's contributed portion by reason of cost-sharing agreements or any under-recoveries through negotiation of flat amounts for indirect costs.

19. *Maintenance and repair costs.* Costs incurred for necessary maintenance, repair, or upkeep of property (including Government property unless otherwise provided for) which neither adds to the permanent value of the property nor appreciably prolong its intended life but keep it in an efficient operating condition, are allowable.

20. *Material costs.* Costs incurred for purchased materials, supplies, and fabricated parts directly or indirectly related to the research agreement, are allowable. Purchases made specifically for the research agreement should be charged thereto at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the institution. Withdrawals from general stores or stockrooms should be charged at their cost under any recognized method of pricing stores' withdrawals conforming to sound accounting practices consistently followed by the institution. Incoming transportation charges are a proper part of material cost. Direct material cost should include only the materials and supplies actually used for the performance of the research agreement, and due credit should be given for any excess materials retained, or returned to vendors. Due credit should be given for all proceeds or value received for any scrap resulting from work under the research agreement. Where Government-donated or furnished material is used in performing the research agreement, such material will be used without charge.

21. *Memberships, subscriptions, and professional activity costs.* a. Costs of the institution's membership in civic, business, technical, and professional organizations are allowable.

b. Costs of the institution's subscriptions to civic, business, professional, and technical periodicals are allowable.

c. Costs of meetings and conferences, when the primary purpose is the dissemination of technical information, are allowable. This includes costs of meals, transportation, rental of facilities, and other items incidental to such meetings or conferences.

22. *Patent costs.* Cost of preparing disclosures, reports, and other documents required by the research agreement and of searching the art to the extent necessary to make such invention disclosures, are allowable. In accordance with the clauses of the research agreement relating to patents, costs of preparing documents and any other patent costs, in connection with the filing of a patent application where title is conveyed to the Government, are allowable. (See also section J.33.)

23. *Pension plan costs.* Costs of the institution's pension plan which are incurred in accordance with the established policies of the institution are allowable, provided such policies meet the test of reasonableness and the methods of cost allocation are not discriminatory, and provided appropriate adjustments are made for credits or gains arising out of normal and abnormal employee turnover or any other contingencies that can result in forfeitures by employees which inure to the benefit of the institution.

24. *Plant security costs.* Necessary expenses incurred to comply with Government security requirements, including wages, uniforms, and equipment of personnel engaged in plant protection, are allowable.

25. *Preresearch agreement costs.* Costs incurred prior to the effective date of the research agreement, whether or not they would have been allowable thereunder if incurred after such date, are unallowable unless specifically set forth and identified in the research agreement.

26. *Professional services costs.* a. Costs of professional services rendered by the members of a particular profession who are not employees of the institution are allowable subject to b. and c. below, when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government. Retainer fees to be allowable must be reasonably supported by evidence of services rendered.

b. Factors to be considered in determining the allowability of costs in a particular case include (1) the past pattern of such costs, particularly in the years prior to the award of Government research agreements; (2) the impact of Government research agreements on the institution's total activity; (3) the nature and scope of managerial services expected of the institution's own organizations; and (4) whether the proportion of Government work to the institution's total activity is such as to influence the institution in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Government research agreements.

c. Costs of legal, accounting, and consulting services, and related costs, incurred in connection with organization and reorganization or the prosecution of claims against the Government, are unallowable. Costs of legal, accounting and consulting services, and related costs, incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the research agreement.

27. *Profits and losses on disposition of plant, equipment, or other capital assets.* Profits or losses of any nature arising from the sale or exchange of plant, equipment, or other capital assets, including sale or exchange of either short- or long-term investments, shall not be considered in computing research agreement costs.

28. *Proposal costs.* Proposal costs are the costs of preparing bids or proposals on potential Government and nongovernment research agreements or projects, including the development of engineering data and cost data necessary to support the institution's bids or proposals. Proposal costs of the current accounting period of both successful and unsuccessful bids and proposals normally should be treated as indirect costs and allocated currently to all activities of the institution, and no proposal costs of past accounting periods will be allocable in the current period to the Government research agreement. However, the institution's established practices may be to treat proposal costs by some other recognized method. Regardless of the method used, the results obtained may be accepted only if found to be reasonable and equitable.

29. *Public information services costs.* Costs of news releases pertaining to specific research or scientific accomplishment are unallowable unless specifically authorized by the sponsoring agency.

30. *Rearrangement and alteration costs.* Costs incurred for ordinary or normal rearrangement and alteration of facilities are allowable. Special arrangement and alteration costs incurred specifically for the project are allowable when such work has been approved in advance by the sponsoring agency concerned.

31. *Reconversion costs.* Costs incurred in the restoration or rehabilitation of the institution's facilities to approximately the same condition existing immediately prior to commencement of Government research agreement work, fair wear and tear excepted, are allowable.

32. *Recruiting costs.* a. Subject to b., c., and d. below, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of "help wanted" advertising, operating costs of an employment office necessary to secure and maintain an adequate staff, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment [illegible] new employees, are allowable to the extent that such costs are incurred pursuant to a well-managed recruitment program. Where the institution uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

b. In publications, costs of help-wanted advertising that includes color, includes advertising material for other than recruitment purposes, or is excessive in size (taking into consideration recruitment purposes for which intended and normal institutional practices in this respect), are unallowable.

c. Costs of help-wanted advertising, special emoluments, fringe benefits, and salary allowances incurred to attract professional personnel from other institutions that do not meet the test of reasonableness or do not conform with the established practices of the institution, are unallowable.

d. Where relocation costs incurred incident to recruitment of a new employee have been allowed either as an allocable direct or indirect cost, and the newly hired employee resigns for reasons within his control within 12 months after hire, the institution will be required to refund or credit such relocation costs to the Government.

33. *Royalties and other costs for use of patents.* Royalties on a patent or amortization of the costs of acquiring a patent or invention or rights thereto, necessary for the proper performance of the research agreement and applicable to tasks or processes thereunder, are allowable unless the Government has a license or the right to free use of the patent, the patent has been adjudicated to be invalid or has been administratively determined to be invalid, the patent is considered to be unenforceable, or the patent has expired.

34. *Sabbatical leave costs.* Costs of leave of absence to employees for performance of graduate work or sabbatical study, travel, or research, are allowable provided the institution has a uniform policy on sabbatical leave for persons engaged in instruction and persons engaged in research. Such costs will be allocated on an equitable basis among all appertaining activities of the instiutution. Where sabbatical leave is included in fringe benefits for which a cost is determined for assessment as a direct charge, the aggregate amount of such assessments applicable to all work of the institution during the base period must be reasonable in relation to the institution's actual experience under its sabbatical leave policy.

35. *Scholarships and student aid costs.* Costs of scholarships, fellowships and other forms of student aid apply only to instruction and therefore are not allocable to research agreements, either as direct costs or indirect costs. However, in the case of students actually engaged in work under research agreements, any tuition remissions to such students for work performed are allocable to such research agreements provided consistent treatment is accorded such costs. (See section J.39.)

36. *Severance pay.* a. Severance pay is compensation in addition to regular salaries and wages which is paid by an institution to employees whose services are being terminated. Costs of severance pay are allowable only to the extent that such payments are required by law, by employer-employee agreement, by established policy that constitutes in effect an implied agreement on the institution's part, or by circumstances of the particular employment.

b. Severance payments that are due to normal, recurring turnover and which otherwise meet the conditions of a. above may be allowed provided the actual costs of such severance payments are regarded as expenses applicable to the current fiscal year and are equitably distributed among the institution's activities during that period.

c. Severance payments that are due to abnormal or mass terminations are of such conjectural nature that allowability must be determined on a case-by-case basis. However, the Govermnment recognizes its obligation to participate, to the extent of its fair share, in any specific payment.

37. *Specialized service facilities operated by institution.* a. The costs, including amortization by generally accepted accounting practice, of institutional services involving the use of highly complex and specialized facilities such as electronic computers, including the cost of adapting computers for use, wind tunnels, and reactors are allowable provided the charges therefor meet the conditions of b. or c. below, and otherwise take into account any items of income or Federal financing that qualify as applicable credits under section C.5.

b. The costs of such institutional services normally will be charged directly to applicable research agreements based on actual usage or occupancy of the facilities on the basis of a schedule of rates that (1) is designed to recover only aggregate costs of providing such services over a long term agreed upon in advance by the cognizant Federal agency on an individual basis, and (2) is applied on a nondiscriminatory basis as between organized research and other work of the institution, including usage by the institution for internal purposes. Commercial or accommodation sales of computer services will be charged at not less than the above rates; however, if the rates charged for these services are greater, the total amount of charges above the scheduled rates when significant may be considered in revising the schedule of rates. Further, within the constraints of this paragraph, it is not necessary that the rates charged for services be equal to the cost of providing those services during any one fiscal year.

c. In the absence of an acceptable arrangement for direct costing as provided in b. above, the costs incurred for such institutional services may be assigned to research agreements as indirect costs, provided the methods used achieve substantially the same results. Such arrangements should be worked out in coordination with the cognizant Federal agency in order to assure equitable distribtution of the indirect costs.

38. *Special services costs.* Costs incurred for general public relations activities, catalogs, alumni activities, and similar services, are unallowable.

39. *Staff benefits.* a. Staff benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, military leave, and the like, are allowable provided such costs are absorbed by all institutional activities, including organized research, in proportion to the relative amount of time or effort actually devoted to each. (See section J.34. for treatment of sabbatical leave.)

b. Staff benefits in the form of employer contributions or expenses for social security, employee insurance, workmen's compensation insurance, the pension plan (see section J.23.), tuition or remission of tuition for individual employees or their families (see section J.35.), and the like, are allowable provided such benefits are granted in accordance with established institutional policies, and provided such contributions and other expenses, whether treated as indirect costs or as an increment of direct labor costs, are distributed to particular research agreements and other activities in a manner consistent with the pattern of benefits accruing to the individuals or groups of employees whose salaries and wages are chargeable to such research agreements and other activities.

40. *Student activity costs.* Costs incurred for intramural activities, student publications, student clubs, and other student activities, apply only to instruction and therefore are not allocable to research agreements, either as direct costs or indirect costs.

41. *Student services costs.* Costs of the deans of students, administration of student affairs, registrar, placement offices, student advisers, student health and infirmary services, and such other activities as are identifiable with student services apply only to instruction and therefore are not allocable to research agreements, either as direct costs or indirect costs. However, in the case of students actually engaged in work under research agreements, a proportion of student services costs measured by the relationship between hours of work by students on such research work and total student hours including all research time may be allowed as a part of research administration expenses.

42. *Taxes.* a. In general, taxes which the institution is required to pay and which are paid or accrued in accordance with generally accepted accounting principles, and payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable, except for: (1) taxes from which exemptions are available to the institution directly or which are available to the institution based on an exemption afforded the Government and in the latter case when the sponsoring agency makes available the necessary exemption certificates, and (2) special assessments on land which represent capital improvements.

b. Any refund of taxes, interest, or penalties, and any payment to the institution of interest thereon, attributable to taxes, interest, or penalties which were allowed as research agreement costs, will be credited or paid to the Government in the manner directed by the Government provided any interest actually aid or credited to an institution incident to a refund of tax, interest and penalty will be paid or credited to the Government only to the extent that such interest accrued over the period during which the institution had been reimbursed by the Government for the taxes, interest, and penalties.

43. *Transportation costs.* Costs incurred for freight, express, cartage, postage, and other transportation services relating either to goods purchased, in process, or delivered, are allowable. When such costs can readily be identified with the items involved, they may be charged directly as transportation costs or added to the cost of such items. Where identification with the materials received cannot readily be made, inbound transportation costs may be charged to the appropriate indirect cost accounts if the institution follows a consistent, equitable

procedure in this respect. Outbound freight, if reimbursable under the terms of the research agreement, should be treated as a direct cost.

44. *Travel costs.* a. Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the institution. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed by the institution in its regular operations.

b. Travel costs are allowable subject to c., d., e., and f. below, when they are directly attributable to specific work under a research agreement or are incurred in the normal course of administration of the institution or a department or research program thereof.

c. The difference in cost between first-class air accommodations and less than first-class air accommodations is unallowable except when less than first-class air accommodations are not reasonably available to meet necessary mission requirements, such as where less than first-class accommodations would:

(1) Require circuitous routing, (2) require travel during unreasonable hours, (3) greatly increase the duration of the flight, (4) result in additional costs which would offset the transportation savings, or (5) offer accommodations which are not reasonably adequate for the medical needs of the traveler.

d. Costs of personnel movements of a special or mass nature are allowable only when authorized or approved in writing by the sponsoring agency or its authorized representative.

e. Foreign travel costs are allowable only when the travel has received specific prior approval. Each separate foreign trip must be specifically approved. For purposes of this provision, foreign travel is defined as "any travel outside of Canada and the United States and its territories and possessions."

f. Expenditures for domestic travel may not exceed $500, or 125 percent of the amount allotted for such travel by the sponsoring agency, whichever is greater, except with approval.

45. *Termination costs applicable to research agreements.* a. Termination of research agreements generally gives rise to the incurrence of costs or to the need for special treatment of costs, which would not have arisen had the agreement not been terminated. Items peculiar to termination are set forth below. They are to be used in conjunction with all other provisions of this Appendix in the case of termination.

b. The cost of common items of material reasonably usable on the institution's other work will not be allowable unless the institution submits evidence that it could not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the institution, consideration should be given to the institution's plans and orders for current and scheduled work. Contemporaneous purchases of common items by the institution will be regarded as evidence that such items are reasonably usable on the institution's other work. Any acceptance of common items as allowable to the terminated portion of the agreement should be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

c. If in a particular case, despite all reasonable efforts by the institution, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this Appendix, except that any such costs continuing after termination due to the negligent or willful failure of the institution to discontinue such costs will be considered unacceptable.

d. Loss of useful value of special tooling and special machinery and equipment is generally allowable, provided: (1) such special tooling, machinery, or equipment is not reasonably capable of use in the other work of the institution; (2) the interest of the Government is protected by transfer of title or by other means deemed appropriate by the contracting officer or equivalent; and (3) the loss of useful value as to any one terminated agreement is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the agreement bears to the entire terminated agreement and other Government agreements for which the special tooling, special machinery, or equipment was acquired.

e. Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated agreement, less the residual value of such leases, if: (1) the amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the agreement and such further period as may be reasonable; and (2) the institution makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the agreement, and of reasonable restoration required by the provisions of the lease.

f. Settlement expenses including the following are generally allowable: (1) accounting, legal, clerical, and similar costs reasonably necessary for the preparation and presentation to contracting officers or equivalent of settlement claims and supporting data with respect to the terminated portion of the agreement, and the termination and settlement of subagreements; and (2) reasonable costs for the storage, transportation, protection, and disposition of property provided by the Government or acquired or produced by the institution for the agreement.

g. Claims under subagreements, including the allocable portion of claims which are common to the agreement and to other work of the institution, are generally allowable.

K. Certification of Charges.

To assure that expenditures for research grants and contracts are proper and in accordance with the research agreement documents and approved project budgets, the annual and/or final fiscal reports or vouchers requesting payment under research agreements will include a certification, signed by an authorized official of the univesity, which reads essentially as follows: "I certify that all expenditures reported (or payments requested) are for appropriate purposes and in accordance with the agreements set forth in the application and award documents."

Part II—Principles for Determining Costs Applicable to Training and Other Educational Services Under Grants and Contracts With Educational Institutions

A. *Purpose.* This part extends the scope of Part I to cover the determination of costs incurred by educational institutions under Federal grants and contracts for training and other educational services.

B. *Application.* The Department of Health Education, and Welfare will use Parts I and II of this Appendix as a basis for determining allowable costs under grants and cost reimbursement type contracts with educational institutions for work performed under federally supported education service agreements.

C. *Terminology* The following definitions are to be used in determining the indirect cost of federally sponsored training and other educational services under this Part II:

1 *Educational service agreement* means any grant or contract under which Federal financing is provided on a cost reimbursement basis for all or an agreed portion of the costs incurred for training or other educational services. Typical of the work covered by educational service agreements are summer institutes, special training programs for selected participants, professional or technical services to cooperating countries, the development and introduction of new or expanded courses, and similer instructional oriented undertakings, including special research training programs, that are separately budgeted and accounted for by the institution.

The term does not extend to: (a) grants or contracts for organized research, (b) arrangements under which the Federal financing is exclusively in the form of scholarships, fellowships, traineeships, or other fixed amounts such as a cost of education allowance or the normal published tuition rates and fees of an institution, or (c) construction, facility and exclusively general resource or institutional-type grants.

2. *Instruction* means all of the academic work other than organized research carried on by an institution, including the teaching of graduate and undergraduate courses, departmental research (see section B.2. of Part I) and all special training or other instructional-oriented projects sponsored by the Federal Government or others under educational service agreements.

D. *Student administration and services.* In addition to the five major functional categories of indirect costs described in section F of Part I, there is established an additional category under the title "Student administration and services" to embrace the following:

1. The expenses in this category are those that have been incurred for the administration of student affairs and for services to students, including expenses of such activities as deans of students, admissions, registrar, counseling and placement services, student advisers, student health and infirmary services, catalogs, and commencements and convocations. The salaries of members of the academic staff whose academic appointments or assignments involve the performance of such administrative or service work may also be included to the extent that the portion so charged is supported pursuant to section J.2. of Part I. The student administration and services category also includes the staff benefit and pension plan costs applicable to the salaries and wages included therein, an appropriate share of the cost of the operation and maintenance of the physical plant, and charges representing use allowance or depreciation applicable to the buildings and equipment utilized in the performance of the functions included in this category.

2. The expenses in this category are generally applicable in their entirety to the instruction activity. They should be allocated to applicable cost objectives within the instruction activity, including educational service agreements, when such agreements reasonably benefit from these expenses. Such expenses should be allocated on the basis of population served (computed on the basis of full-time equivalents including students, faculty, and others as appropriate) or other methods which will result in an equitable distribution to cost objectives in relation to the benefits received and be consistent with guides provided in section E.2. of Part I.

E. *Direct costs of educational service agreements.* Direct costs of work performed under educational service agreements will be determined consistent with the principles set forth in section D of Part I.

F. *Indirect costs of the instruction activity.* The indirect costs of the instruction activity as a whole should include its allocated share of administrative and supportive costs determined in accordance with the principles set forth in section D above and in section F of Part I. Such costs may include other items of indirect cost incurred solely for the instruction activity and not included in the general allocation of the various categories of indirect expenses. Costs incurred for the institutions by State and local governments are allowable as provided for in section C.6. of Part I.

G. *Indirect costs applicable to educational service agreements.* The individual items of indirect costs applicable to the instruction activity as a whole should be assigned to: (1) educational service agreements, and (2) all other instructional work through use of appropriate cost groupings, selected distribution bases, and other reasonable methods as outlined in section E.2. of Part I. A single indirect pool may be used for all educational service agreements provided this results in a reasonably equitable distribution of costs among agreements in relation to indirect support services provided. However, when the level of indirect support significantly varies for work performed either on campus or off campus under a particular agreement or group of agreements, separate cost pools should be established consistent with the principles set forth in section G.1.b. of Part I. Where direct charges are provided for under educational service agreements for such things as commencement fees, student fees, and tuition, the related indirect costs, through separate cost groupings, should be excluded from the indirect costs allocable to the service agreements.

H. *Indirect cost rates for educational service agreements.* An indirect cost rate should be determined for the educational service agreement pool or pools, as established under section G above. The rate in each case should be stated as the percentage which the amount of the particular educational service agreement pool is of the total direct salaries and wages of all educational service agreements identified with such pool. Indirect costs should be distributed to individual agreements by applying the rate or rates established to direct salaries and wages for each agreement. When a fixed rate is negotiated in advance of a fiscal year, the over- or under-recovery for that year may be included as an adjustment to the indirect cost for the next rate negotiation as in sections G.4. and G.5. of Part I.

I. *General standards for selected items of cost.* The standards for selected items of cost as set forth in sections J.1. through J.46. of Part I applicable to research agreements will also be applied to educational service agreements with the following modifications:

1. *Commencement and convocation costs (J.5.).* Expenses incurred for convocations and commencements apply to the instruction activity as a whole. Such expenses are unallowable as direct costs of educational service agreements unless specifically authorized in the agreement or approved in writing by the sponsoring agency. For eligibility of allocation as indirect costs, see section D.

2. *Compensation for personal services (J.7.).* Charges to educational service agreements for personal services will normally be determined and supported consistent with the provisions of section J.7. of Part I. However, the provision for stipulated salary support will not be used for educational service agreements. Also, charges may include compensation in excess of the base salary of a faculty member for the conduct of courses outside the normal duties of such member provided that: (a) extra charges are determined at a rate not greater than the basic salary rate of the member; (b) salary payments for such work follow practices consistently applied within the institution; and (c) specific authorization for such charges is included in the educational service agreement.

3. *Scholarships and student aid costs (J.35.).* Expenses incurred for scholarships and student aid are unallowable as either direct costs or indirect costs of educational service agreements, unless specifically authorized in the educational service agreement or approved in writing by the sponsoring agency.

4. *Student activity costs (J.40.).* Expenses incurred for student activities are unallowable as either direct costs or indirect costs of educational service agreements, unless specifically authorized in the educational service agreement or approved in writing by the sponsoring agency.

5. *Student services costs (J.41.).* Expenses incurred for student services are unallowable as direct costs of educational service agreements unless specifically authorized in the agreement or approved in writing by the sponsoring agency. For eligibility of allocation as indirect costs, see section D.

Appendix E—Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts With Hospitals

I. Purpose and Scope

A. *Objectives.* This appendix provides principles for determining the costs applicable to research and development work performed by hospitals under grants and contracts with the Department of Health, Education, and Welfare. These principles are confined to the subject of cost determination and make no attempt to identify the circumstances or dictate the extent of hospital participation in the financing of a particular research or development project. The principles are designed to provide recognition of the full allocated costs of such research work under generally accepted accounting principles. These principles will be applicable to both proprietary and non-profit hospitals. No provision for profit or other increment above cost is provided for in these principles. However, this is not to be interpreted as precluding a negotiated fee between contracting parties when a fee is appropriate.

B. *Policy guides.* The successful application of these principles requires development of mutual understanding between representatives of hospitals and of the Department of Health, Education, and Welfare as to their scope, applicability and interpretation. It is recognized that:

1. The arrangements for hospital participation in the financing of a research and development project are properly subject to negotiation between the agency and the hospital concerned in accordance with such Government-wide criteria as may be applicable.

2. Each hospital, possessing its own unique combination of staff, facilities and experience, should be encouraged to conduct research in a manner consonant with its own institutional philosophies and objectives.

3. Each hospital in the fulfillment of its contractual obligations should be expected to employ sound management practices.

4. The application of the principles established herein shall be in conformance with the generally accepted accounting practices of hospitals.

5. Hospitals receive reimbursements from the Federal Government for differing types of services under various programs such as support of Research and Development (including discrete clinical centers) Health Services Projects, Medicare, etc. It is essential that consistent procedures for determining reimbursable costs for similar services be employed without regard to

program differences. Therefore, both the direct and indirect costs of research programs must be identified as a cost center(s) for the cost finding and step-down requirements of the Medicare program, or in its absence the Medicaid program.

C. *Application.* All operating agencies within the Department of Health, Education, and Welfare that sponsor research and development work in hospitals will apply these principles and related policy guides in determining the costs incurred for such work under grants and cost-reimbursement type contracts and subcontracts. These principles will also be used as a guide in the pricing of fixed-price contracts and subcontracts.

II. Definitions of Terms

A. "Organized research" means all research activities of a hospital that may be identified whether the support for such research is from a federal, non-federal or internal source.

B. "Departmental research" means research activities that are not separately budgeted and accounted for. Such work, which includes all research activities not encompassed under the term organized research, is regarded for purposes of this document as a part of the patient care activities of the hospital.

C. "Research agreement" means any valid arrangement to perform federally-sponsored research or development including grants, cost-reimbursement type contracts, cost-reimbursement type subcontracts, and fixed-price contracts and subcontracts.

D. "Instruction and training" means the formal or informal programs of educating and training technical and professional health services personnel, primarily medical and nursing training. This activity, if separately budgeted or identifiable with specific costs, should be considered as a cost objective for purposes of indirect cost allocations and the development of patient care costs.

E. "Other hospital activities" means all organized activities of a hospital not immediately related to the patient care, research, and instructional and training functions which produce identifiable revenue from the performance of these activities. If a non-related activity does not produce identifiable revenue, it may be necessary to allocate this expense using an appropriate basis. In such a case, the activity may be included as an allocable cost (See para. III D below.) Also included under this definition is any category of cost treated as "Unallowable," provided such category of cost identifies a function or activity to which a portion of the institution's indirect cost (as defined in para. V. A.) are properly allocable.

F. "Patient care" means those departments or cost centers which render routine or ancillary services to in-patients and/or out-patients. As used in para. IX B.23, it means the cost of these services applicable to patients involved in research programs.

G. "Allocation" means the process by which the indirect costs are assigned as between:

1. Organized research,
2. Patient care including departmental research,
3. Instruction and training, and
4. Other hospital activities.

H. "Cost center" means an identifiable department or area (including research) within the hospital which has been assigned an account number in the hospital accounting system for the purpose of accumulating expense by department or area.

I. "Cost finding" is the process of recasting the data derived from the accounts ordinarily kept by a hospital to ascertain costs of the various types of services rendered. It is the determination of direct costs by specific identification and the proration of indirect costs by allocation.

J. "Step down" is a cost finding method that recognizes that services rendered by certain nonrevenue-producing departments or centers are utilized by certain other nonrevenue producing centers as well as by the revenue-producing centers. All costs of nonrevenue-producing centers are allocated to all centers which they serve, regardless of whether or not these centers produce revenue. Following the apportionment of the cost of the nonrevenue-producing center, that center will be considered closed and no further costs are apportioned to that center.

K. "Scatter bed" is a bed assigned to a research patient based on availability. Research patients occupying these beds are not physically segregated from nonresearch patients occupying beds. Scatter beds are geographically dispersed among all the beds available for use in the hospital. There are no special features attendant to a scatter bed that distinguishes it from others that could just as well have been occupied.

L. "Discrete bed" is a bed or beds that have been set aside for occupancy by research patients and are physically segregated from other hospital beds in an environment that permits an easily ascertainable allocation of costs associated with the space they occupy and the services they generate.

III. Basic Considerations

A. *Composition of total costs.* The cost of a research agreement is comprised of the allowable direct costs incident to its performance plus the allocable portion of the allowable indirect costs of the hospital less applicable credits. (See para. III–E.)

B. *Factors affecting allowability of costs.* The tests of allowability of costs under these principles are:

1. They must be reasonable.
2. They must be assigned to research agreements under the standards and methods provided herein.
3. They must be accorded consistent treatment through application of those generally accepted accounting principles appropriate to the circumstances (See para. I–E.5.) and
4. They must conform to any limitations or exclusions set forth in these principles or in the research agreement as to types or amounts of cost items.

C. *Reasonable costs.* A cost may be considered reasonable if the nature of the goods or services acquired or applied, and the amount involved therefor reflect the action that a prudent person would have taken under the circumstances prevailing at the time the decision to incur the cost was made. Major considerations involved in the determination of the reasonableness of a cost are:

1. Whether or not the cost is of a type generally recognized as necessary for the operation of the hospital or the performance of the research agreement,
2. The restraints or requirements imposed by such factors as arm's length bargaining, federal and state laws and regulations, and research agreement terms and conditions,
3. Whether or not the individuals concerned acted with due prudence in the circumstances, considering their responsibilities to the hospital, its patients, its employees, its students, the Government, and the public at large, and
4. The extent to which the actions taken with respect to the incurrence of the cost are consistent with established hospital policies and practices applicable to the work of the hospital generally, including Government research.

D. *Allocable costs.* 1. A cost is allocable to a particular cost center (i.e., a specific function, project, research agreement, department, or the like) if the goods or services involved are chargeable or assignable to such cost center in accordance with relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable to a research agreement if it is incurred solely to advance the work under the research agreement; or it benefits both the research agreement and other work of the hospital in proportions that can be approximated through use of reasonable methods; or it is necessary to the overall operation of the hospital and, in light of the standards provided in this chapter, is deemed to be assignable in part to organized research. Where the purchase of equipment or other capital items are specifically authorized under a research agreement, the amounts thus authorized for such purchases are allocable to the research agreement regardless of the use that may subsequently be made of the equipment or other capital items involved.

2. Any costs allocable to a particular research agreement under the standards provided in these principles may not be shifted to other research agreements in order to meet deficiencies caused by overruns or other fund considerations, to avoid restrictions imposed by law or by terms of the research agreement, or for other reasons of convenience.

E. *Applicable credits.* 1. The term applicable credits refers to those receipts or negative expenditure types of transactions which operate to offset or reduce expense items that are allocable to research agreements as direct or indirect costs as outlined in para. V-A. Typical examples of such transactions are: purchase discounts, rebates, or allowances; recoveries or indemnities on losses; sales of scrap or incidental services; tuition; adjustments of overpayments or erroneous charges; and services rendered to patients admitted to federally funded clinical research centers, primarily for care though also participating in research protocols.

2. In some instances, the amounts received from the Federal Government to finance hospital activities or service operations

should be treated as applicable credits. Specifically, the concept of netting such credit items against related expenditures should be applied by the hospital in determining the rates or amounts to be charged to government research for services rendered whenever the facilities or other resources used in providing such services have been financed directly, in whole or in part, by federal funds. Thus, where such items are provided for or benefit a particular hospital activity, i.e., patient care, research, instruction and training, or other, they should be treated as an offset to the indirect costs apportioned to that activity. Where the benefits are common to all hospital activities they should be treated as a credit to the total indirect cost pool before allocation to the various cost objectives.

IV. Direct Costs

A. *General.* Direct costs are those that can be identified specifically with a particular cost center. For this purpose, the term cost center refers not only to the ultimate centers against which costs are finally lodged such as research agreements, but also to other established cost centers such as the individual accounts for recording particular objects or items of expense, and the separate account groupings designed to record the expenses incurred by individual organizational units, functions, projects and the like. In general, the administrative functions and service activities described in para. VI are identifiable as separate cost centers, and the expenses associated with such centers become eligible in due course for distribution as indirect costs of research agreements and other ultimate cost centers.

B. *Application to research agreements.* Identifiable benefit to the research work rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect costs of research agreements. Typical of transactions chargeable to a research agreement as direct costs are the compensation of employees for the time or effort devoted to the performance of work under the research agreement, including related staff benefit and pension plan costs to the extent that such items are consistently accorded to all employees and treated by the hospital as direct rather than indirect costs (see para. V. B4b); the costs of materials consumed or expended in the performance of such work; and other items of expense incurred for the research agreement, such as extraordinary utility consumption. The cost of materials supplied from stock or services rendered by specialized facilities or other institutional service operations may be included as direct costs of research agreements provided such items are consistently treated by the institution as direct rather than indirect costs and are charged under a recognized method of costing or pricing designed to recover only the actual direct and indirect costs of such material or service and conforming to generally accepted cost accounting practices consistently followed by the institution.

V. Indirect Costs

A. *General.* Indirect costs are those that have been incurred for common or joint objectives, and thus are not readily subject to treatment as direct costs of research agreements or other ultimate or revenue producing cost centers. In hospitals such costs normally are classified but not necessarily restricted to the following functional categories: Depreciation; Administrative and General (including fringe benefits if not charged directly); Operation of Plant; Maintenance of Plant; Laundry and Linen Service; Housekeeping; Dietary; Maintenance of Personnel; and Medical Records and Library.

B. *Criteria for distribution.*—1. *Base period.* A base period for distribution of indirect costs is the period during which such costs are incurred and accumulated for distribution to work performed within that period. The base period normally should coincide with the fiscal year established by the hospital, but in any event the base period should be so selected as to avoid inequities in the distribution of costs.

2. *Need for cost groupings.* The overall objective of the allocation process is to distribute the indirect costs described in para. VI to organized research, patient care, instruction and training, and other hospital activities in reasonable proportions consistent with the nature and extent of the use of the hospital's resources by research personnel, medical staff, patients, students, and other personnel or organizations. In order to achieve this objective with reasonable precision, it may be necessary to provide for selective distribution by establishing separate groupings of cost within one or more of the functional categories of indirect costs referred to in para. V-A. In general, the cost groupings established within a functional category should constitute, in each case, a pool of those items of expense that are considered to be of like character in terms of their relative contribution to (or degree of remoteness from) the particular cost centers to which distribution is appropriate. Each such pool or cost grouping should then be distributed individually to the related cost centers, using the distribution base or method most appropriate in the light of the guides set out in B3 below. While this paragraph places primary emphasis on a step-down method of indirect cost computation, para. VIII provides an alternate method which may be used under certain conditions.

3. *Selection of distribution method.* Actual conditions must be taken into account in selecting the method or base to be used in distributing to related cost centers the expenses assembled under each of the individual cost groups established as indicated under B2 above. Where a distribution can be made by assignment of a cost grouping directly to the area benefited, the distribution should be made in that manner. Care should be given, however, to eliminate similar or duplicative costs from any other distribution made to this area. Where the expenses under a cost grouping are more general in nature, the distribution to related cost centers should be made through use of a selected base which will produce results which are equitable to both the Government and the hospital. In general, any cost element or cost-related factor associated with the hospital's work is potentially adaptable for use as a distribution base provided:

a. It can readily be expressed in terms of dollars or other quantitative measure (total direct expenditures, direct salaries, manhours applied, square feet utilized, hours of usage, number of documents processed, population served, and the like); and

b. It is common to the related cost centers during the base period. The essential consideration in selection of the distribution base in each instance is that it be the one best suited for assigning the pool of costs to related cost centers in accord with the relative benefits derived; the traceable cause and effect relationship; or logic and reason where neither benefit nor cause and effect relationship is determinable.

4. *General consideration on cost groupings.* The extent to which separate cost groupings and selective distribution would be appropriate at a hospital is a matter of judgment to be determined on a case-by-case basis. Typical situations which may warrant the establishment of two or more separate cost groups (based on account classification or analysis) within a functional category include but are not limited to the following:

a. Where certain items or categories of expense relate solely to one of the major divisions of the hospital (patient care, sponsored research, instruction and training, or other hospital activities) or to any two but not all, such expenses should be set aside as a separate cost grouping for direct assignment or selective distribution in accordance with the guides provided in B2 and B3 above.

b. Where any types of expense ordinary treated as indirect cost as outlined in para. V-A are charged to research agreements as direct costs, the similar type expenses applicable to other activities of the institution must through separate cost grouping be excluded from the indirect costs allocable to research agreements.

c. Where it is determined that certain expenses are for the support of a service unit or facility whose output is susceptible of measurement on a workload or other quantitative basis, such expenses should be set aside as a separate cost grouping for distribution on such basis to organized research and other hospital activities.

d. Where organized activities (including identifiable segments of organized research as well as the activities cited in para. II-E) provide their own purchasing, personnel administration, building maintenance, or housekeeping or similar service, the distribution of such elements of indirect cost to such activities should be accomplished through cost grouping which includes only that portion of central indirect costs (such as for overall management) which are properly allocable to such activities.

e. Where the hospital elects to treat as indirect charges the costs of pension plans and other staff benefits, such costs should be set aside as a separate cost grouping for selective distribution to related cost centers, including organized research.

f. Where the hospital is affiliated with a medical school or some other institution which performs organized research on the hospital's premises, every effort should be made to establish separate cost groupings in the Administrative and General or other applicable category which will reasonably reflect the use of services and facilities by such research. (See also para. VII-A.3)

5. *Materiality.* Where it is determined that the use of separate cost groupings and selective distribution are necessary to produce equitable results, the number of such separate cost groupings within a functional category should be held within practical limits, after taking into consideration the materiality of the amounts involved and the degree of precision attainable through less selective methods of distribution.

C. *Administration of limitations on allowances for indirect costs.* 1. Research grants may be subject to laws and/or administrative regulations that limit the allowance for indirect costs under each such grant to a stated percentage of the direct costs allowed. Agencies that sponsor such grants will establish procedures which will assure that:

a. the terms and amount authorized in each case conform with the provisions of paragraphs III, V and IX of these principles as they apply to matters involving the consistent treatment and allowability of individual items of cost; and

b. the amount actually allowed for indirect costs under each such research grant does not exceed the maximum allowable under the limitation or the amount otherwise allowable under these principles, whichever is the smaller.

2. Where the actual allowance for indirect costs on any research grant must be restricted to the smaller of the two alternative amounts referred to in C1 above, such alternative amounts should be determined in accordance with the following guides:

a. The maximum allowable under the limitation should be established by applying the stated percentage to a direct cost base which shall include all items of expenditure authorized by the sponsoring agency for inclusion as part of the total cost for the direct benefit of the work under the grant; and

b. The amount otherwise allowable under these principles should be established by applying the current institutional indirect cost rate to those elements of direct cost which were included in the base on which the rate was computed.

3. When the maximum amount allowable under a statutory limitation or the terms of a research agreement is less than the amount otherwise allocable as indirect costs under these principles, the amount not recoverable as indirect costs under the research agreement involved may not be shifted to other research agreements.

VI. Identification and Assignment of Indirect Costs

A. *Depreciation or use charge.* 1. The expenses under this heading should include depreciation (as defined in para. IX–B.9a) on buildings, fixed equipment, and movable equipment, except to the extent purchased through federal funds. Where adequate records for the recording of depreciation are not available, a use charge may be substituted for depreciation (See para. IX–B.)

2. The expenses included in this category should be allocated to applicable cost centers in a manner consistent with the guides set forth in para. V–B, on a basis that gives primary emphasis to (a) space utilization with respect to depreciation on buildings and fixed equipment; and (b) specific identification of assets and their use with respect to movable equipment as it relates to patient care, organized research, instruction and training, and other hospital activities. Where such records are not sufficient for the purpose of the foregoing, reasonable estimates will suffice as a means for effecting distribution of the amounts involved.

B. *Administration and general expenses.* 1. The expenses under this heading are those that have been incurred for the administrative offices of the hospital including accounting, personnel, purchasing, information centers, telephone expense, and the like which do not relate solely to any major division of the institution, i.e., solely to patient care, organized research, instruction and training, or other hospital activities.

2. The expenses included in this category may be allocated on the basis of total expenditures exclusive of capital expenditures, or salaries and wages in situations where the results of the distribution made on this basis are deemed to be equitable both to the Government and the hospital; otherwise the distribution of Administration and General expenses should be made through use of selected bases, applied to separate cost groupings established within this category of expenses in accordance with the guides set out in para. V–B.

C. *Operation of plant.* 1. The expenses under this heading are those that have been incurred by a central service organization or at the departmental level for the administration, supervision, and provision of utilities (exclusive of telephone expense) and protective services to the physical plant. They include expenses incurred for such items as power plant operations, general utility costs, elevator operations, protection services, and general parking lots.

2. The expenses included in this category should be allocated to applicable cost centers in a manner consistent with the guides provided in para. V–B, on a basis that gives primary emphasis to space utilization. The allocations should be developed as follows:

a. Where actual space and related cost records are available or can readily be developed and maintained without significant change in the accounting practices, the amount distributed should be based on such records;

b. Where the space and related cost records maintained are not sufficient for purposes of the foregoing, a reasonable estimate of the proportion of total space assigned to the various costs centers normally will suffice as a means for effecting distribution of the amounts involved; or

c. Where it can be demonstrated that an area or volume or space basis of allocation is impractical or inequitable, other bases may be used provided consideration is given to the use of facilities by research personnel and others, including patients.

D. *Maintenance of plant.* 1. The expenses under this heading should include:

a. All salaries and wages pertaining to ordinary repair and maintenance work performed by employees on the payroll of the hospital;

b. All supplies and parts used in the ordinary repairing and maintaining of buildings and general equipment; and

c. Amounts paid to outside concerns for the ordinary repairing and maintaining of buildings and general equipment.

2. The expenses included in this category should be allocated to applicable cost centers in a manner consistent with the guides provided in para. V–B. on a basis that gives primary emphasis to space utilization. The allocations and apportionments should be developed as follows:

a. Where actual space and related cost records are available and can readily be developed and maintained without significant change in the accounting practices, the amount distributed should be based on such records;

b. Where the space and related cost records maintained are not sufficient for purposes of the foregoing, a reasonable estimate of the proportion of total space assigned to the various cost centers normally will suffice as a means for effecting distribution of the amounts involved; or

c. Where it can be demonstrated that an area or volume of space basis of allocation is impractical or inequitable, other basis may be used provided consideration is given to the use of facilities by research personnel and others, including patients.

E. *Laundry and linen.* 1. The expenses under this heading should include:

a. Salaries and wages of laundry department employees, seamstresses, clean linen handlers, linen delivery men, etc.;

b. Supplies used in connection with the laundry operation and all linens purchased; and

c. Amounts paid to outside concerns for purchased laundry and/or linen service.

2. The expense included in this category should be allocated to related cost centers in a manner consistent with the guides provided in para. V–B. on a basis that gives primary emphasis to actual pounds of linen used. The allocations should be developed as follows:

a. Where actual poundage and related cost records are available or can readily be developed and maintained without significant change in the accounting practices, the amount distributed should be based on such records;

b. Where it can be demonstrated that a poundage basis of allocation is impractical or inequitable other bases may be used provided consideration is given to the use of linen by research personnel and others, including patients.

F. *Housekeeping.* 1. The expenses under this heading should include:

a. All salaries and wages of the department head, foreman, maids, porters, janitors, wall washers, and other housekeeping employees;

b. All supplies used in carrying out the housekeeping functions; and

c. Amounts paid to outside concerns for purchased services such as window washing, insect extermination, etc.

2. The expenses included in this category should be allocated to related cost centers in a manner consistent with the guides provided in para. V–B. on a basis that gives primary emphasis to space actually serviced by the housekeeping department. The allocations and apportionments should be developed as follows:

a. Where actual space serviced and related cost records are available or can readily be developed and maintained without significant change in the accounting practices, the amount distributed should be based on such records;

b. Where the space serviced and related cost records maintained are not sufficient for purposes of the foregoing, a reasonable estimate of the proportion of total space assigned to the various cost centers normally will suffice as a means for effecting distribution of the amounts of housekeeping expenses involved; or

c. Where it can be demonstrated that the space serviced basis of allocation is impractical or inequitable, other bases may be used provided consideration is given to the use of housekeeping services by research personnel and others, including patients.

G. *Dietary.* 1. These expenses, as used herein, shall mean only the subsidy provided by the hospital to its employees including research personnel through its cafeteria operation. The hospital must be able to demonstrate through the use of proper cost accounting techniques that the cafeteria operates at a loss to the benefit of employees.

2. The reasonable operating loss of a subsidized cafeteria operation should be allocated to related cost centers in a manner consistent with the guides provided in para. V–B. on a basis that gives primary emphasis to number of employees.

H. *Maintenance (housing) of personnel.* 1. The expenses under this heading should include:

a. The salaries and wages of matrons, clerks, and other employees engaged in work in nurses' residences and other employees' quarters;

b. All supplies used in connection with the operation of such dormitories; and

c. Payments to outside agencies for the rental of houses, apartments, or rooms used by hospital personnel.

2. The expenses included in this category should be allocated to related cost centers in a manner consistent with the guides provided in para. V–B. on a basis that gives primary emphasis to employee utilization of housing facilities. The allocation should be developed as follows:

a. Appropriate credit should be given for all payments received from employees or otherwise to reduce the expense to be allocated;

b. A net cost per housed employee may then be computed; and

c. Allocation should be made on a departmental basis based on the number of housed employees in each respective department.

I. *Medical records and library.* 1. The expenses under this heading should include:

a. The salaries and wages of the records librarian, medical librarian, clerks, stenographers, etc.; and

b. All supplies such as medical record forms, chart covers, filing supplies, stationery, medical library books, periodicals, etc.

2. The expenses included in this category should be allocated to related cost centers in a manner consistent with the guides provided in para. V–B. on a basis that gives primary emphasis to a special time survey of medical records personnel. If this appears to be impractical or inequitable, other bases may be used provided consideration is given to the use of these facilities by research personnel and others, including patients.

VII. Determination and Application of Indirect Cost Rate or Rates

A. *Indirect cost pools.* 1. Subject to (2) below, indirect costs allocated to organized research should be treated as a common pool, and the costs in such common pool should be distributed to individual research agreements benefiting therefrom on a single rate basis.

2. In some instances a single rate basis for use on all government research at a hospital may not be appropriate since it would not take into account those different environmental factors which may affect substantially the indirect costs applicable to a particular segment of government research at the institution. For this purpose, a particular segment of government research may be that performed under a single research agreement or it may consist of research under a group of research agreements performed in a common environment. The environmental factors are not limited to the physical location of the work. Other important factors are the level of the administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. Where a particular segment of government research is performed within an environment which appears to generate a significantly different level of indirect costs, provision should be made for a separate indirect cost pool applicable to such work. An example of this differential may be in the development of a separate indirect cost pool for a clinical research center grant. The separate indirect cost pool should be developed during the course of the regular distribution process, and the separate indirect cost rate resulting therefrom should be utilized provided it is determined that:

a. Such indirect cost rate differs significantly from that which would have obtained under (1) above; and

b. The volume of research work to which such rate would apply is material in relation to other government research at the institution.

3. It is a common practice for grants or contracts awarded to other institutions, typically University Schools of Medicine, to be performed on hospital premises. In these cases the hospital should develop a separate indirect cost pool applicable to the work under such grants or contracts. This pool should be developed by a selective distribution of only those indirect cost categories which benefit the work performed by the other institution, within the practical limits dictated by available data and the materiality of the amounts involved. Hospital costs determined to be allocable to grants or contracts awarded to another institution may not be recovered as a cost of grants or contracts awarded directly to the hospital.

B. *The distribution base.* Preferably, indirect costs allocated to organized research should be distributed to applicable research agreements on the basis of direct salaries and wages. However, where the use of salaries and wages results in an inequitable allocation of costs to the research agreements, total direct costs or a variation thereof, may be used in lieu of salaries and wages. Regardless of the base used, an indirect cost rate should be determined for each of the separate indirect cost pools developed pursuant to para. VII–A. The rate in each case should be stated as the percentage which the amount of the particular indirect cost pool is of the total direct salaries and wages (or other base selected) for all research agreements identified with such a pool.

C. *Negotiated lump sum for overhead.* A negotiated fixed amount in lieu of indirect costs may be appropriate for self-contained or off-campus research activities where the benefits derived from a hospital's indirect services cannot be readily determined. Such amount negotiated in lieu of indirect costs will be treated as an offset to the appropriate indirect cost pool after allocation to patient care, organized research, instruction and training, and other hospital activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

D. *Predetermined overhead rates.* The utilization of predetermined fixed overhead rates may offer potential advantages in the administration of research agreements by facilitating the preparation of research budgets and permitting more expeditious close out of the agreements when the work is completed. Therefore, to the extent allowed by law, consideration may be given to the negotiation of predetermined fixed rates in those situations where the cost experience and other pertinent factors available are deemed sufficient to enable the Government and the hospital to reach a reasonable conclusion as to the probable level of the indirect cost rate for the ensuing accounting period.

VIII. Simplified Method for Small Institutions

A. *General.* 1. Where the total direct cost of all government-sponsored research and development work at a hospital in a year is minimal, the use of the abbreviated procedure described in para. VIII–B below may be acceptable in the determination of allowable indirect costs. This method may also be used to initially determine a provisional indirect cost rate for hospitals that have not previously established a rate. Under this abbreviated procedure, data taken directly from the institution's most recent annual financial report and immediately available supporting information will be utilized as a basis for determining the indirect cost rate applicable to research agreements at the institution.

2. The rigid formula approach provided under the abbreviated procedure has

limitations which may preclude its use at some hospitals either because the minimum data required for this purpose are not readily available or because the application of the abbreviated procedure to the available data produces results which appear inequitable to the Government or the hospital. In any such case, indirect costs should be determined through use of the regular procedure rather than the abbreviated procedure.

3. In certain instances where the total direct cost of all government-sponsored research and development work at the hospital is more than minimal, the abbreviated procedure may be used if prior permission is obtained. This alternative will be granted only in those cases where it can be demonstrated that the step-down technique cannot be followed.

B. *Abbreviated procedure.* 1. Total expenditures as taken from the most recent annual financial report will be adjusted by eliminating from further consideration expenditures for capital items as defined in para. IX–B.4 and unallowable costs as defined under various headings in para. IX and para. III–E.

2. Total expenditures as adjusted under the foregoing will then be distributed among (a) expenditures applicable to administrative and general overhead functions, (b) expenditures applicable to all other overhead functions, and (c) expenditures for all other purposes. The first group shall include amounts associated with the functional categories, Administration and General, and Dietary, as defined in para. VI. The second group shall include Depreciation, Operation of Plant, Maintenance of Plant, and Housekeeping. The third group—expenditures for all other purposes—shall include the amounts applicable to all other activities, namely, patient care, organized research, instruction and training, and other hospital activities as defined under para. II–E. For the purposes of this section, the functional categories of Laundry and Linen, Maintenance of Personnel, and Medical Records and Library as defined in para. VI shall be considered as expenditures for all other purposes.

3. The expenditures distributed to the first two groups in para. VIII–B.2 should then be adjusted by those receipts or negative expenditure types of transactions which tend to reduce expense items allocable to research agreements as indirect costs. Examples of such receipts or negative expenditures are itemized in para. III–E.1.

4. In applying the procedures in para. VIII–B.1 and B.2, the cost of unallowable activities such as Gift Shop, Investment Property Management, Fund Raising, and Public Relations, when they benefit from the hospital's indirect cost services, should be treated as expenditures for all other purposes. Such activities are presumed to benefit from the hospital's indirect cost services when they include salaries of personnel working in the hospital. When they do not include such salaries, they should be eliminated from the indirect cost rate computation.

5. The indirect cost rate will then be computed in two stages. The first stage requires the computation of an Administrative and General rate component. This is done by applying a ratio of research direct costs over total direct costs to the Administrative and General pool developed under para. VIII–B.2 and B.3 above. The resultant amount—that which is allocable to research—is divided by the direct research cost base. The second stage requires the computation of an All other Indirect Cost rate component. This is done by applying a ratio of research direct space over total direct space to All Other Indirect Cost pool developed under para. VIII–B.2 and B.3 above. The resultant amount—that which is allocable to research—is divided by the direct research cost base.

The total of the two rate components will be the institution's indirect cost rate. For the purposes of this section, the research direct cost or space and total direct cost or space will be that cost or space identified with the functional categories classified under Expenditures for all other purposes under para. VIII–B.2.

IX. General Standards for Selected Items of Cost

A. *General.* This section provides standards to be applied in establishing the allowability of certain items involved in determining cost. These standards should apply irrespective of whether a particular item of cost is properly treated as direct cost or indirect cost. Failure to mention a particular item of cost in the standards is not intended to imply that it is either allowable or unallowable; rather, determination as to allowability in each case should be based on the treatment or standards provided for similar or related items of cost. In case of discrepancy between the provisions of a specific research agreement and the applicable standards provided, the provisions of the research agreement should govern. However, in some cases advance understandings should be reached on particular cost items in order that the full costs of research be supported. The extent of allowability of the selected items of cost covered in this section has been stated to apply broadly to many accounting systems in varying environmental situations. Thus, as to any given research agreement, the reasonableness and allocability of certain items of costs may be difficult to determine, particularly in connection with hospitals which have medical school or other affiliations. In order to avoid possible subsequent disallowance or dispute based on unreasonableness or nonallocability, it is important that prospective recipients of federal funds particularly those whose work is predominantly or substantially with the Government, seek agreement with the Government in advance of the incurrence of special or unusual costs in categories where reasonableness or allocability are difficult to determine. Such agreement may also be initiated by the Government. Any such agreement should be incorporated in the research agreement itself. However, the absence of such an advance agreement on any element of cost will not in itself serve to make that element either allowable or unallowable. Examples of costs on which advance agreements may be particularly important are:

1. Facilities costs, such as:
   a. Depreciation
   b. Rental
   c. Use charges for fully depreciated assets
   d. Idle facilities and idle capacity
   e. Plant reconversion
   f. Extraordinary or deferred maintenance and repair
   g. Acquisition of automatic data processing equipment.
2. Preaward costs
3. Non-hospital professional activities
4. Self-insurance
5. Support services charged directly (computer services, printing and duplicating services, etc.)
6. Employee compensation, travel, and other personnel costs, including:
   a. Compensation for personal service, including wages and salaries, bonuses and incentives, premium payments, pay for time not worked, and supplementary compensation and benefits, such as pension and retirement, group insurance, severance pay plans, and other forms of compensation
   b. Morale, health, welfare, and food service and dormitory costs
   c. Training and education costs
   d. Relocation costs, including special or mass personnel movement

B. *Selected items.—1. Advertising costs.* The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television programs, direct mail, exhibits, and the like. The only advertising costs allowable are those which are solely for:

a. The recruitment of persons required for the performance by the institution of obligations arising under the research agreement, when considered in conjunction with all other recruitment costs as set forth in para IX–B.34

b. The procurement of scarce items for the performance of the research agreement; or

c. The disposal of scrap or surplus materials acquired in the performance of the research agreement.

Costs of this nature, if incurred for more than one research agreement or for both research agreement work and other work of the institution, are allowable to the extent that the principles in paragraph IV and V are observed.

2. *Bad debts.* Losses arising from uncollectible accounts and other claims and related collection and legal costs are unallowable except that a bad debt may be included as a direct cost of the research agreement to the extent that it is caused by a research patient and approved by the awarding agency. This inclusion is only intended to cover the situation of the patient admitted for research purposes who subsequently or in conjunction with the research receives clinical care for which a charge is made to the patient. If, after exhausting all means of collecting these charges, a bad debt results, it may be considered an appropriate charge to the research agreement.

3. *Bonding costs.* a. Bonding costs arise when the Government requires assurance against financial loss to itself or others by reason of the act or default of the hospital.

They arise also in instances where the hospital requires similar assurance.

Included are such types as bid, performance, payment, advance payment, infringement, and fidelity bonds.

b. Costs of bonding required pursuant to the terms of the research agreement are allowable.

c. Costs of bonding required by the hospital in the general conduct of its business are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

4. *Capital expenditures.* The costs of equipment, buildings, and repairs which materially increase the value or useful life of buildings or equipment should be capitalized and are unallowable except as provided for in the research agreement.

5. *Civil defense costs.* Civil defense costs are those incurred in planning for, and the protection of life and property against the possible effects of enemy attack. Reasonable costs of civil defense measures (including costs in excess of normal plant protection costs, first-aid training and supplies, fire-fighting training, posting of additional exit notices and directions, and other approved civil defense measures) undertaken on the institution's premises pursuant to suggestions or requirements of civil defense authorities are allowable when distributed to all activities of the institution. Capital expenditures for civil defense purposes will not be allowed, but a use allowance or depreciation may be permitted in accordance with provisions set forth elsewhere. Costs of local civil defense projects not on the institution's premises are unallowable.

6. *Communication costs.* Costs incurred for telephone services, local and long distance telephone calls, telegrams, radiograms, postage, and the like are allowable.

7. *Compensation for personal services.*—a. *General.* Compensation for personal services covers all remuneration paid currently or accrued to employees of the hospital for services rendered during the period of performance under government research agreements. Such remuneration includes salaries, wages, staff benefits (see para. IX-B.10), and pension plan costs (see para. IX-B.25). The costs of such remuneration are allowable to the extent that the total compensation to individual employees is reasonable for the services rendered and conforms to the established policy of the institution consistently applied, and provided that the charges for work performed directly on government research agreements and for other work allocable as indirect costs to sponsored research are determined and supported as hereinafter provided. For non-profit, non-proprietary institutions, where federally supported programs constitute less than a preponderance of the activity at the institution the primary test of reasonableness will be to require that the institution's compensation policies be applied consistently both to federally-sponsored and non-sponsored activities alike. However, where special circumstances so dictate a contractual clause may be utilized which calls for application of the test of comparability in determining the reasonableness of compensation.

b. *Payroll distribution.* Amounts charged to organized research for personal services, regardless of whether treated as direct costs or allocated as indirect costs, will be based on hospital payrolls which have been approved and documented in accordance with generally accepted hospital practices. In order to develop necessary direct and indirect allocations of cost, supplementary data on time or effort as provided in (c) below, normally need be required only for individuals whose compensation is properly chargeable to two or more research agreements or to two or more of the following broad functional categories: (1) patient care; (2) organized research; (3) instruction and training; (4) indirect activities as defined in para. V-A; or (5) other hospital activities as defined in para. II-E.

c. *Reporting time or effort.* Charges for salaries and wages of individuals other than members of the professional staff will be supported by daily time and attendance and payroll distribution records. For members of the professional staff, current and reasonable estimates of the percentage distribution of their total effort may be used as support in the absence of actual time records. The term professional staff for purposes of this section includes physicians, research associates, and other personnel performing work at responsible levels of activities. These personnel normally fulfill duties, the competent performance of which usually requires persons possessing degrees from accredited institutions of higher learning and/or state licensure. In order to qualify as current and reasonable, estimates must be made no later than one month (though not necessarily a calendar month) after the month in which the services were performed.

d. *Preparation of estimates of effort.* Where required under (c) above, estimates of effort spent by a member of the professional staff on each research agreement should be prepared by the individual who performed the services or by a responsible individual such as a department head or supervisor having first-hand knowledge of the services performed on each research agreement. Estimates must show the allocation of effort between organized research and all other hospital activities in terms of the percentage of total effort devoted to each of the broad functional categories referred to in (b) above. The estimate of effort spent on a research agreement may include a reasonable amount of time spent in activities contributing and intimately related to work under the agreement, such as preparing and delivering special lectures about specific aspects of the ongoing research, writing research reports and articles, participating in appropriate research seminars, consulting with colleagues with respect to related research, and attending appropriate scientific meetings and conferences. The term "all other hospital activities" would include departmental research, administration, committee work, and public services undertaken on behalf of the hospital.

e. *Application of budget estimates.* Estimates determined before the performance of services, such as budget estimates on a monthly, quarterly, or yearly basis do not qualify as estimates of effort spent.

f. *Non-hospital professional activities.* A hospital must not alter or waive hospital-wide policies and practices dealing with the permissible extent of professional services over and above those traditionally performed without extra hospital compensation, unless such arrangements are specifically authorized by the sponsoring agency. Where hospital-wide policies do not adequately define the permissible extent of consultantships or other non-hospital activities undertaken for extra pay, the Government may require that the effort of professional staff working under research agreements be allocated as between (1) hospital activities, and (2) non-hospital professional activities. If the sponsoring agency should consider the extent of non-hospital professional effort excessive, appropriate arrangements governing compensation will be negotiated on a case by case basis.

g. *Salary rates for part-time appointments.* Charges for work performed on government research by staff members having only part-time appointments will be determined at a rate not in excess of that for which he is regularly paid for his part-time staff assignment.

8. *Contingency provisions.* Contributions to a contingency reserve or any similar provisions made for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening, are unallowable.

9. *Depreciation and use allowances.* a. Hospitals may be compensated for the use of buildings, capital improvements and usable equipment on hand through depreciation or use allowances. Depreciation is a charge to current operations which distributes the cost of a tangible capital asset, less estimated residual value, over the estimated useful life of the asset in a systematic and logical manner. It does not involve a process of valuation. Useful life has reference to the prospective period of economic usefulness in the particular hospital's operations as distinguished from physical life. Use allowances are the means of allowing compensation when depreciation or other equivalent costs are not considered.

b. Due consideration will be given to government-furnished research facilities utilized by the institution when computing use allowances and/or depreciation if the government-furnished research facilities are material in amount. Computation of the use allowance and/or depreciation will exclude both the cost or any portion of the cost of grounds, buildings and equipment borne by or donated by the Federal Government, irrespective of where title was originally vested or where it presently resides, and secondly, the cost of grounds. Capital expenditures for land improvements (paved areas, fences, streets, sidewalks, utility conduits, and similar improvements not already included in the cost of buildings) are allowable provided the systematic amortization of such capital expenditures has been provided in the institution's books of accounts, based on reasonable determinations of the probable useful lives of the individual items involved, and the share allocated to organized research is developed from the amount thus amortized for the base period involved.

c. Normal depreciation on a hospital's plant, equipment, and other capital facilities, except as excluded by (d) below, is an allowable element of research cost provided that the amount thereof is computed:

1. Upon the property cost basis used by the hospital for Federal Income Tax purposes (See section 167 of the Internal Revenue Code of 1954); or

2. In the case of non-profit or tax exempt organizations, upon a property cost basis which could have been used by the hospital for Federal Income Tax purposes, had such hospital been subject to the payment of income tax; and in either case

3. By the consistent application to the assets concerned of any generally accepted accounting method, and subject to the limitations of the Internal Revenue Code of 1954 as amended, including—

i. The straight line method;

ii. The declining balance method, using a rate not exceeding twice the rate which would have been used had the annual allowance been computed under the method described in (i) above;

iii. The sum of the years-digits method; and

iv. Any other consistent method productive of an annual allowance which, when added to all allowances for the period commencing with the use of the property and including the current year, does not during the first two-thirds of the useful life of the property exceed the total of such allowances which would have been used had such allowances been computed under the method described in (ii) above.

d. Where the depreciation method is followed, adequate property records must be maintained. The period of useful service (service life) established in each case for usable capital assets must be determined on a realistic basis which takes into consideration such factors as type of construction, nature of the equipment used, technological developments in the particular research area, and the renewal and replacement policies followed for the individual items or classes of assets involved. Where the depreciation method is introduced for application to assets acquired in prior years, the annual charges therefrom must not exceed the amounts that would have resulted had the depreciation method been in effect from the date of acquisition of such assets.

e. Depreciation on idle or excess facilities shall not be allowed except on such facilities as are reasonably necessary for standby purposes.

f. Where an institution elects to go on a depreciation basis for a particular class of assets, no depreciation, rental or use charge may be allowed on any such assets that would be viewed as fully depreciated; provided, however, that reasonable use charges may be negotiated for any such assets if warranted after taking into consideration the cost of the facility or item involved, the estimated useful life remaining at time of negotiation, the actual replacement policy followed in the light of service lives used for calculating depreciation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the facility or item for the purpose contemplated.

g. Hospitals which choose a depreciation allowance for assets purchased prior to 1966 based on a percentage of operating costs in lieu of normal depreciation for purposes of reimbursement under Public Law 89-97 (Medicare) shall utilize that method for determining depreciation applicable to organized research.

The operating costs to be used are the lower of the hospital's 1965 operating costs or the hospital's current year's allowable costs. The percent to be applied is 5 percent starting with the year 1966-67, with such percentage being uniformity reduced by one-half percent each succeeding year. The allowance based on operating costs is in addition to regular depreciation on assets acquired after 1965. However, the combined amount of such allowance on pre-1966 assets and the allowance for actual depreciation on assets acquired after 1965 may not exceed 6 percent of the hospital's allowable cost for the current year. After total depreciation has been computed, allocation methods are used to determine the share attributable to organized research.

For purposes of this section, "Operating Costs" means the total costs incurred by the hospital in operating the institution, and includes patient care, research, and other activities. "Allowable Costs" means operating costs less unallowable costs as defined in these principles; by the application of allocation methods to the total amount of such allowable costs, the share attributable to Federally-sponsored research is determined.

A hospital which elects to use this procedure under Public Law 89-97 and subsequently changes to an actual depreciation basis on pre-1966 assets in accordance with the option afforded under the Medicare program shall simultaneously change to an actual depreciation basis for organized research.

Where the hospital desires to change to actual depreciation but either has no historical cost records or has incomplete records, the determination of historical cost could be made through appropriate means involving expert consultation with the determination being subject to review and approval by the Department of Health, Education, and Welfare.

h. Where the use allowance method is followed, the use allowance for buildings and improvements will be computed at an annual rate not exceeding two percent of acquisition cost. The use allowance for equipment will be computed at an annual rate not exceeding six and two-thirds percent of acquisition cost of usable equipment in those cases where the institution maintains current records with respect to such equipment on hand. Where the institution's records reflect only the cost (actual or estimated) of the original complement of equipment, the use allowance will be computed at an annual rate not exceeding ten percent of such cost. Original complement for this purpose means the complement of equipment initially placed in buildings to perform the functions currently being performed in such buildings; however, where a permanent change in the function of a building takes place, a redetermination of the original complement of equipment may be made at that time to establish a new original complement. In those cases where no equipment records are maintained, the institution will justify a reasonable estimate of the acquisition cost of usable equipment which may be used to compute the use allowance at an annual rate not exceeding six and two-thirds percent of such estimate.

i. Depreciation and/or use charges should usually be allocated to research and other activities as an indirect cost.

10. *Employee morale, health, and welfare costs and credits.* The costs of house publications, health or first-aid benefits, recreational activities, employees' counseling services and other expenses incurred in accordance wtih the hospital's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale, and employee performance, are allowable. Such costs will be equitably apportioned to all activities of the hospital. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably set over to employee welfare organizations.

11. *Entertainment costs.* Except as pertains to 10 above, costs incurred for amusement, social activities, entertainment, and any items relating thereto, such as meals, lodging, rentals, transportation, and gratuities are unallowable.

12. *Equipment and other facilities.* The cost of equipment or other facilities are allowable on a direct charge basis where such purchases are approved by the sponsoring agency concerned or provided for by the terms of the research agreement.

13. *Fines and penalties.* Costs resulting from violations of, or failure of the institution to comply with federal, state and local laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of the research agreement, or instructions in writing from the awarding agency.

14. *Insurance and indemnification.* a. Costs of insurance required or approved and maintained pursuant to the research agreement are allowable.

b. Costs of other insurance maintained by the hospital in connection with the general conduct of its activities are allowable subject to the following limitations: (1) types and extent and cost of coverage must be in accordance with sound institutional practice; (2) costs of insurance or of any contributions to any reserve covering the risk of loss of or damage to government owned property are unallowable except to the extent that the Government has specifically required or approved such costs; and (3) costs of insurance on the lives of officers or trustees are unallowable except where such insurance is part of an employee plan which is not unduly restricted.

c. Contributions to a reserve for an approved self-insurance program are allowable to the extent that the types of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks. Such contributions are subject to prior approval of the Government.

d. Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise) are unallowable unless expressly provided for in the research agreement, except that costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice as well as minor losses not covered by insurance such as spoilage, breakage and disappearance of small hand tools which occur in the ordinary course of operations are allowable.

15. *Interest, fund raising and investment management costs.* a. Costs incurred for interest on borrowed capital or temporary use of endowment funds, however represented, are unallowable.

b. Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are not allowable.

c. Costs of investment counsel and staff and similar expenses incurred solely to enhance income from investments are not allowable.

d. Costs related to the physical custody and control of monies and securities are allowable.

16. *Labor relations costs.* Costs incurred in maintaining satisfactory relations between the hospital and its employees, including costs of labor management committees, employees' publications, and other related activities are allowable.

17. *Losses on research agreements or contracts.* Any excess of costs over income under any agreement or contract of any nature is unallowable. This includes, but is not limited to, the hospital's contributed portion by reason of cost-sharing agreements, under-recoveries through negotiation of flat amounts for overhead, or legal or administrative limitations.

18. *Maintenance and repair costs.* a. Costs necessary for the upkeep of property (including government property unless otherwise provided for), which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are to be treated as follows:

1. Normal maintenance and repair costs are allowable;

2. Extraordinary maintenance and repair costs are allowable, provided they are allocated to the periods to which applicable for purposes of determining research costs.

b. Expenditures for plant and equipment, including rehabilitation thereof, which according to generally accepted accounting principles as applied under the hospital's established policy, should be capitalized and subjected to depreciation, are allowable only on a depreciation basis.

19. *Material costs.* Costs incurred for purchased materials, supplies and fabricated parts directly or indirectly related to the research agreement, are allowable. Purchases made specifically for the research agreement should be charged thereto at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the institution. Withdrawals from general stores or stockrooms should be charged at their cost under any recognized method of pricing stores withdrawals conforming to sound accounting practices consistently followed by the hospital. Incoming transportation charges are a proper part of material cost. Direct material cost should include only the materials and supplies actually used for the performance of the research agreement, and due credit should be given for any excess materials retained or returned to vendors. Due credit should be given for all proceeds or value received for any scrap resulting from work under the research agreement. Where government donated or furnished material is used in performing the research agreement, such material will be used without charge.

20. *Memberships, subscriptions and professional activity costs.* a. Costs of the hospital's membership in civic, business, technical and professional organizations are allowable.

b. Costs of the hospital's subscriptions to civic, business, professional and technical periodicals are allowable.

c. Costs of meetings and conferences, when the primary purpose is the dissemination of technical information, are allowable. This includes costs of meals, transportation, rental of facilities, and other items incidental to such meetings or conferences.

21. *Organization costs.* Expenditures such as incorporation fees, attorneys' fees, accountants' fees, brokers' fees, fees to promoters and organizers in connection with (a) organization or reorganization of a hospital, or (b) raising capital, are unallowable.

22. *Other business expenses.* Included in this item are such recurring expenses as registry and transfer charges resulting from changes in ownership of securities issued by the hospital, cost of shareholders meetings preparation and publication of reports to shareholders, preparation and submission of required reports and forms to taxing and other regulatory bodies, and incidental costs of directors and committee meetings. The above and similar costs are allowable when allocated on an equitable basis.

23. *Patient care.* The cost of routine and ancillary or special services to research patients is an allowable direct cost of research agreements.

a. Routine services shall include the costs of the regular room, dietary and nursing services, minor medical and surgical supplies and the use of equipment and facilities for which a separate charge is not customarily made.

b. Ancillary or special services are the services for which charges are customarily made in addition to routine services, such as operating rooms, anesthesia, laboratory, BMR-EKG, etc.

c. Patient care, whether expressed as a rate or an amount, shall be computed in a manner consistent with the procedures used to determine reimbursable costs under Public Law 89-97 (Medicare Program) as defined under the "Principles Of Reimbursement For Provider Costs" published by the Social Security Administration of the Department of Health, Education, and Welfare. The allowability of specific categories of cost shall be in accordance with those principles rather than the principles for research contained herein. In the absence of participation in the Medicare program by a hospital, all references to the Medicare program in these principles shall be construed as meaning the Medicaid program.

i. Once costs have been recognized as allowable, the indirect costs or general service center's cost shall be allocated (stepped-down) to special service centers, and all patient and nonpatient costs centers based upon actual services received or benefiting those centers.

ii. After allocation, routine and ancillary costs shall be apportioned to scatter-bed research patients on the same basis as is used to apportion costs to Medicare patients, i.e. using either the departmental method or the combination method, as those methods are defined by the Social Security Administration, except that final settlement shall be on a grant-by-grant basis. However, to the extent that the Social Security Administration has recognized any other method of cost apportionment, that method generally shall also be recognized as applicable to the determination of research patient care costs.

iii. A cost center must be established on Medicare reimbursement forms for each discrete-bed unit grant award received by a hospital. Routine costs should be stepped-down to this line item(s) in the normal course of stepping-down costs under Medicare/Medicaid requirements. However, in stepping-down routine costs, consideration must be given to preventing a step-down of those costs to discrete-bed unit line items that have already been paid for directly by the grant, such as bedside nursing costs. Ancillary costs allocable to research discrete-bed units shall be determined and proposed in accordance with Section 23.c.ii.

d. Where federally sponsored research programs provide specifically for the direct reimbursement of nursing, dietary, and other services, appropriate adjustment must be made to patient care costs to preclude duplication and/or misallocation of costs.

24. *Patent costs.* Costs of preparing disclosures, reports and other documents required by the research agreement and of searching the art to the extent necessary to make such invention disclosures are allowable. In accordance with the clauses of the research agreement relating to patents, costs of preparing documents and any other patent costs, in connection with the filing of a patent application where title is conveyed to the Government, are allowable. (See also para. IX–B.38.)

25. *Pension plan costs.* Costs of the hospital's pension plan which are incurred in accordance with the established policies of the institution are allowable, provided such policies meet the test of reasonableness and the methods of cost allocation are not discriminatory, and provided appropriate adjustments are made for credits or gains arising out of normal and abnormal employee turnover or any other contingencies that can result in forfeitures by employees which inure to the benefit of the hospital.

26. *Plan security costs.* Necessary expenses incurred to comply with government security

requirements including wages, uniforms and equipment of personnel engaged in plant protection are allowable.

27. *Preresearch agreement costs.* Costs incurred prior to the effective date of the research agreement, whether or not they would have been allowable thereunder if incurred after such date, are unallowable unless specifically set forth and identified in the research agreement.

28. *Professional services costs.* a. Costs of professional services rendered by the members of a particular profession who are not employees of the hospital are allowable subject to (b) and (c) below when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government. Retainer fees to be allowable must be reasonably supported by evidence of services rendered.

b. Factors to be considered in determining the allowability of costs in a particular case include (1) the past pattern of such costs, particularly in the years prior to the award of government research agreements on the institution's total activity; (2) the nature and scope of managerial services expected of the institution's own organizations; and (3) whether the proportion of government work to the hospital's total activity is such as to influence the institution in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under government research agreements.

c. Costs of legal, accounting and consulting services, and related costs incurred in connection with organization and reorganization or the prosecution of claims against the Government are unallowable. Costs of legal, accounting and consulting services, and related costs incurred in connection with patent infringement litigation are unallowable unless otherwise provided for in the research agreement.

29. *Profits and losses on disposition of plant equipment, or other assets.* Profits or losses of any nature arising from the sale or exchange of plant, equipment, or other capital assets, including sales or exchange of either short- or long-term investments, shall be excluded in computing research agreement costs.

30. *Proposal costs.* Proposal costs are the costs of preparing bids or proposals on potential government and non-government research agreements or projects, including the development of technical data and cost data necessary to support the institution's bids or proposals. Proposal costs of the current accounting period of both successful and unsuccessful bids and proposals normally should be treated as indirect costs and allocated currently to all activities of the institution, and no proposal costs of past accounting periods will be allocable in the current period to the government research agreement. However, the institution's established practices may be to treat proposal costs by some other recognized method. Regardless of the methods used, the results obtained may be accepted only if found to be reasonable and equitable.

31. *Public information services costs.* Costs of news releases pertaining to specific research or scientific accomplishment are unallowable unless specifically authorized by the sponsoring agency.

32. *Rearrangement and alteration costs.* Costs incurred for ordinary or normal rearrangement and alteration of facilities are allowable. Special rearrangement and alteration costs incurred specifically for a project are allowable only as a direct charge when such work has been approved in advance by the sponsoring agency concerned.

33. *Reconversion costs.* Costs incurred in the restoration or rehabilitation of the institution's facilities to approximately the same condition existing immediately prior to commencement of government research agreement work, fair wear and tear excepted, are allowable.

34. *Recruiting costs.* a. Subject to (b), (c), and (d) below, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of "help wanted" advertising, operating costs of an employment office necessary to secure and maintain an adequate staff, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees are allowable to the extent that such costs are incurred pursuant to a well managed recruitment program. Where an institution uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

b. In publications, costs of help wanted advertising that includes color, includes advertising material for other than recruitment purposes, or is excessive in size (taking into consideration recruitment purposes for which intended and normal institutional practices in this respect) are unallowable.

c. Costs of help wanted advertising, special emoluments; fringe benefits, and salary allowances incurred to attract professional personnel from other institutions that do not meet the test of reasonableness or do not conform with the established practices of the institution are unallowable.

d. Where relocation costs incurred incident to recruitment of a new employee have been allowed either as an allocable direct or indirect cost, and the newly hired employee resigns for reasons within his control within twelve months after hire, the institution will be required to refund or credit such relocations costs as were charged to the Government.

35. *Rental costs (including sale and lease-back of facilities).* a. Rental costs of land, building, and equipment and other personal property are allowable if the rates are reasonable in light of such factors as rental costs of comparable facilities and market conditions in the area, the type, life expectancy, condition, and value of the facilities leased, options available, and other provisions of the rental agreement. Application of these factors, in situations where rentals are extensively used, may involve among other considerations comparison of rental costs with the amount which the hospital would have received had it owned the facilities.

b. Charges in the nature of rent between organizations having a legal or other affiliation or arrangement such as hospitals, medical schools, foundations, etc., are allowable to the extent such charges do not exceed the normal costs of ownership such as depreciation, taxes, insurance, and maintenance, provided that no part of such costs shall duplicate any other allowed costs.

c. Unless otherwise specifically provided in the agreement, rental costs specified in sale and lease-back agreements incurred by hospitals through selling plant facilities to investment organizations such as insurance companies or to private investors, and concurrently leasing back the same facilities are allowable only to the extent that such rentals do not exceed the amount which the hospital would have received had it retained legal title to the facilities.

36. *Royalties and other costs for use of patents.* Royalties on a patent or amortization of the cost of acquiring a patent or invention or rights thereto necessary for the proper performance of the research agreement and applicable to tasks or processes thereunder are allowable unless the Government has a license or the right to free use of the patent, the patent has been adjudicated to be invalid, or has been administratively determined to be invalid, the patent is considered to be unenforceable, or the patent has expired.

37. *Severance pay.* a. Severance pay is compensation in addition to regular salaries and wages which is paid by a hospital to employees whose services are being terminated. Costs of severance pay are allowable only to the extent that such payments are required by law, by employer-employee agreement, by established policy that constitutes in effect an implied agreement on the institution's part, or by circumstances of the particular employment.

b. Severance payments that are due to normal, recurring turnover, and which otherwise meet the conditions of (a) above may be allowed provided the actual costs of such severance payments are regarded as expenses applicable to the current fiscal year and are equitably distributed among the institution's activities during that period.

c. Severance payments that are due to abnormal or mass terminations are of such conjectural nature that allowability must be determined on a case-by-case basis. However, the Government recognizes its obligation to participate to the extent of its fair share in any specific payment.

38. *Specialized service facilities operated by a hospital.* a. The costs of institutional services involving the use of highly complex and specialized facilities such as electronic computers and reactors are allowable provided the charges therefor meet the conditions of (b) or (c) below, and otherwise take into account any items of income or federal financing that qualify as applicable credits under para. III–E.

b. The costs of such hospital services normally will be charged directly to applicable research agreements based on actual usage or occupancy of the facilities at rates that (1) are designed to recover only actual costs of providing such services, and (2) are applied on a nondiscriminatory basis as between organized research and other work of the hospital including commercial or accommodation sales and usage by the hospital for internal purposes. This would include use of such facilities as radiology, laboratories, maintenance men used for a special purpose, medical art, photography, etc.

c. In the absence of an acceptable arrangement for direct costing as provided in (b) above, the costs incurred for such institutional services may be assigned to research agreements as indirect costs, provided the methods used achieve substantially the same results. Such arrangements should be worked out in coordination with all government users of the facilities in order to assure equitable distribution of the indirect costs.

39. *Special administrative costs.* Costs incurred for general public relations activities, catalogs, alumni activities, and similar services are unallowable.

40. *Staff and/or employee benefits.* a. Staff and/or employee benefits in the form of regular compensation paid to employees during periods of authorized absences from the job such as for annual leave, sick leave, military leave and the like are allowable provided such costs are absorbed by all hospital activities including organized research in proportion to the relative amount of time or effort actually devoted to each.

b. Staff benefits in the form of employer contributions or expenses for Social Security taxes, employee insurance, Workmen's Compensation insurance, the Pension Plan (see para. IX–B.25), hospital costs or remission of hospital charges to the extent of costs for individual employees or their families, and the like are allowable provided such benefits are granted in accordance with established hospital policies, and provided such contributions and other expenses whether treated as indirect costs or an increment of direct labor costs are distributed to particular research agreements and other activities in a manner consistent with the pattern of benefits accruing to the individuals or groups of employees whose salaries and wages are chargeable to such research agreements and other activities.

41. *Taxes.* a. In general, taxes which the hospital is required to pay and which are paid or accrued in accordance with generally accepted accounting principles, and payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable except for (1) taxes from which exemptions are available to the hospital directly or which are available to the hospital based on an exemption afforded the Government and in the latter case when the sponsoring agency makes available the necessary exemption certificates, (2) special assessments on land which represent capital improvements, and (3) Federal Income Taxes.

b. Any refund of taxes, interest, or penalties, and any payment to the hospital of interest thereon attributable to taxes, interest or penalties, which were allowed as research agreement costs will be credited or paid to the Government in the manner directed by the Government provided any interest actually paid or credited to a hospital incident to a refund of tax, interest, and penalty will be paid or credited to the Government only to the extent that such interest accrued over the period during which the hospital had been reimbursed by the Government for the taxes, interest, and penalties.

42. *Transportation costs.* Costs incurred for inbound freight, express, cartage, postage and other transportation services relating either to goods purchased, in process, or delivered are allowable. When such costs can readily be identified with the items involved, they may be charged directly as transportation costs or added to the cost of such items. Where identification with the material received cannot readily be made, inbound transportation costs may be charged to the appropriate indirect cost accounts if the institution follows a consistent equitable procedure in this respect. Outbound freight, if reimbursable under the terms of the research agreement, should be treated as a direct cost.

43. *Travel costs.* a. Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the hospital. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two provided the method used is applied to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed by the institution in its regular operations.

b. Travel costs are allowable subject to (c) and (d) below when they are directly attributable to specific work under a research agreement or when they are incurred in the normal course of administration of the hospital or a department or research program thereof.

c. The difference in cost between first class air accommodations and less than first class air accommodations is unallowable except when less than first class air accommodations are not reasonably available to meet necessary mission requirements such as where less than first class accommodations would (1) require circuitous routing, (2) require travel during unreasonable hours, (3) greatly increase the duration of the flight, (4) result in additional costs which would offset the transportation savings, or (5) offer accommodations which are not reasonably adequate for the medical needs of the traveler.

d. Costs of personnel movements of a special or mass nature are allowable only when authorized or approved in writing by the sponsoring agency or its authorized representative.

44. *Termination costs applicable to contracts.* a. Contract terminations generally give rise to the incurrence of costs or to the need for special treatment of costs which would not have arisen had the contract not been terminated. Items peculiar to termination are set forth below. They are to be used in conjunction with all other provisions of these principles in the case of contract termination.

b. The cost of common items of material reasonably usable on the hospital's other work will not be allowable unless the hospital submits evidence that it could not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the institution, consideration should be given to the hospital's plans for current scheduled work or activities including other research agreements. Contemporaneous purchases of common items by the hospital will be regarded as evidence that such items are reasonably usable on the hospital's other work. Any acceptance of common items as allowable to the terminated portion of the contract should be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirement of other work.

c. If in a particular case, despite all reasonable efforts by the hospital, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in these principles, except that any such costs continuing after termination due to the negligent or willful failure of the hospital to discontinue such costs will be considered unacceptable.

d. Loss of useful value of special tooling and special machinery and equipment is generally allowable, provided (1) such special tooling, machinery or equipment is not reasonably capable of use in the other work of the hospital; (2) the interest of the Government is protected by transfer of title or by other means deemed appropriate by the contracting officer; and (3) the loss of useful value as to any one terminated contract is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the contract bears to the entire terminated contract and other government contracts for which the special tooling, special machinery or equipment was acquired.

e. Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated contract, less the residual value of such leases, if (1) the amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the contract and such further period as may be reasonable; and (2) the hospital makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the contract and of reasonable restoration required by the provisions of the lease.

f. Settlement expenses including the following are generally allowable: (1) accounting, legal, clerical, and similar costs reasonably necessary for the preparation and presentation to contracting officers of settlement claims and supporting data with respect to the terminated portion of the contract and the termination and settlement of subcontracts; and (2) reasonable costs for the storage, transportation, protection, and disposition of property provided by the Government or acquired or produced by the institution for the contract.

g. Subcontractor claims including the allocable portion of claims which are common to the contract and to other work of the contractor are generally allowable.

45. *Voluntary services.* The value of voluntary services provided by sisters or other members of religious orders is allowable provided that amounts do not exceed that paid other employees for similar work. Such amounts must be identifiable in the records of the hospital as a legal obligation of the hospital. This may be reflected by an agreement between the religious order and the hospital supported by evidence of payments to the order.

Appendix F—Principles for Determining Costs Applicable to Grants and Contracts With Nonprofit Institutions

A. Purpose and Scope

1. *Objectives.* This Appendix provides principles for determining the costs applicable to grants and contracts awarded by the Department of Health, Education, and Welfare and performed by nonprofit organizations other than educational institutions, hospitals and State and local Government organizations. These principles are confined to the subject of cost determination and make no attempt to identify the circumstances or dictate the extent of agency and institutional participation in the financing of a particular project. The principles are designed to provide recognition of the full allocated costs of work under generally accepted accounting principles. No provision for profit or other increment above cost is provided for in these principles.

2. *Definition of Nonprofit Institution.* (a) A nonprofit institution for purposes of this document is any corporation, foundation, trust, association, cooperative or other organization other than (i) educational institutions, (ii) hospitals and (iii) State and local Governmental agencies, bureaus or departments, which is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest, which is not organized primarily for profit and which uses all income exceeding costs to maintain, improve and/or expand its operations.

The charter or other legally binding authority for the existence of the institution must provide that no part of the net earnings, properties or other assets of the institution, on dissolution or otherwise, shall inure to the benefits of any private person or individual including any member, employee, officer, director or trustee of the institution, and that, on liquidation or dissolution all properties and assets remaining after providing for all debts and obligations shall be distributed and paid over to such other fund, foundation or other organization formed and operated as a nonprofit institution, as defined herein, as the board of directors or trustees may determine. Institutions which have received tax exemptions as nonprofit institutions from the U.S. Internal Revenue Service shall be considered to have met the criteria of this definition.

(b) For purposes of this document, the terms nonprofit and not-for-profit as they are descriptively applied to institutions shall be considered synonymous provided the requirements of 2(a) are met.

3. *Policy guides.* The successful application of these principles requires development of mutual understanding between representatives of nonprofit institutions and of the Federal Government as to their scope, applicability, and interpretation. It is recognized that the arrangements for agency and institutional participation in the financing of a project are properly subject to negotiation between the agency and the institution concerned in accordance with such governmentwide criteria as may be applicable, that each institution should be expected to employ sound management practice in the fulfillment of its obligation, and that each grantee or contractor organization in recognition of its own unique combination of staff, facilities and experience should be responsible for employing whatever form of organization and management techniques as may be necessary to assure proper efficient administration.

4. *Application.* These principles shall be applied in determining cost incurred in the performance of all grants and cost-reimbursement type contracts awarded by the Department of Health, Education, and Welfare. The principles shall also apply to cost-reimbursement type contracts performed under DHEW grants and cost-reimbursement type subcontracts and shall be used as a guide in the pricing of fixed price contracts and subcontracts. The principles do not apply to construction grants or contracts.

B. Basic Considerations

1. *Composition of total cost.* The total cost of a contract or grant is the sum of the allowable direct and indirect costs allocable to the grant/contract less any applicable credits. In ascertaining what constitutes costs, any generally accepted accounting method of determining or estimating costs that is equitable under the circumstances may be used.

2. *Factors affecting allowability of costs.* Factors to be considered in determining the allowability of individual items of cost include (a) reasonableness, (b) allocability, (c) application of those generally accepted accounting principles and practices appropriate to the particular circumstances, and (d) any limitations or exclusions set forth in this document or otherwise included in the grant/contract as to types or amounts of cost items.

3. *Definition of reasonableness.* A cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by an ordinarily prudent person in the conduct of competitive business. The question of the reasonableness of specific costs must be scrutinized with particular care in connection with institutions or separate divisions thereof which may not be subject to effective competitive restraints. What is reasonable depends upon a variety of considerations and circumstances involving both the nature and amount of the cost in question. In determining the reasonableness of a given cost, consideration shall be given to:

(a) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the institution or the performance of the grant/contract.

(b) The restraints or requirements imposed by such factors as generally accepted sound business practices, arms length bargaining, Federal and State laws and regulations, and grant/contract terms and specifications;

(c) The action that a prudent businessman would take in the circumstances, considering his responsibilities to the public at large, the Government, his employees, his clients, shareholders or members and the fulfillment of the purposes for which the institution was organized; and

(d) Significant deviations from the established practices of the institution which may unjustifiably increase the grant/contract costs.

4. *Definition of allocability.* A cost is allocable if it is assignable or chargeable to a particular cost objective, such as a grant/contract, project, product, service, process, or other major activity, in accordance with the relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable to a Government grant/contract if it:

(a) Is incurred specifically for the grant/contract;

(b) Benefits both the grant/contract and other work and can be distributed to them in reasonable proportion to the benefits received; or

(c) Is necessary to the overall operation of the institution, although a direct relationship to any particular cost objective cannot be shown.

Where an organization utilizes the Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations (or comparable generally accepted accounting standards peculiar to its particular organizational structure or activity) to allocate costs to non-HEW supported activities it must also use such standards to allocate costs to HEW grants/contracts.

5. *Applicable credits.* The term applicable credits refers to those receipt or negative expenditure types of transactions which operate to offset or reduce expense items that are allocable to grants or contracts as direct or indirect costs. Typical examples of such transactions are: purchase discounts, rebates or allowances; recoveries or indemnities on losses; sales of scrap or incidental services; and adjustments of overpayments or erroneous charges. The applicable portion of any income, rebate, allowance, and other credit relating to any allowable cost, received by or accruing to the grantee/contractor shall be credited to the Government either as a cost reduction or by cash refund, as appropriate.

C. Direct Costs

1. A direct cost is any cost which can be identified specifically with a particular cost objective. Direct costs are not limited to items which are incorporated in the end product as material or labor. Costs identified specifically with the grant/contract are direct costs of the grant/contract and may be charged directly thereto. Costs identified specifically with other work of the institution are direct costs of that work and are not to be charged to the grant/contract either directly or indirectly. Items charged as direct cost to Government-supported projects must be

charged in a uniform manner to all other work of the institution in order to preclude an overcharge to the Government as a result of the Government's participation in the indirect cost pool. Conversely, where the institution's established accounting system provides for the treatment of certain items of cost as direct costs of the institution, then the same items must be considered direct costs to Government-supported projects and may not be included in the indirect cost pool.

2. Certain types of cost, or costs associated with certain activities are not reimbursable as a charge to a DHEW grant/contract. These unallowable costs or activities are identified in section G. Even though a particular activity or cost is designated as unallowable for purposes of computing costs charged to Government work, it nonetheless must be treated as a direct cost or activity if a portion of the institution's indirect cost (as defined in section D) is properly allocable to it. The amount of indirect cost allocated must be in accordance with the principles set forth in section D–2. In general, an unallowable institutional activity shall be treated as a direct function when it (1) includes salaries of personnel, (2) occupies space, and (3) is serviced by an indirect cost grouping(s). Thus the costs associated with the following types of activities when normal or necessary to an institution's primary mission shall be treated as direct costs:

(a) Maintenance of membership rolls, subscriptions, publications and related functions.

(b) Providing services and information to members, legislative or administrative bodies or the public.

(c) Promotion, lobbying, and other forms of public relations.

(d) Meetings and conferences except those held to conduct the general administration of the institution.

(e) Fund raising.

(f) Maintenance, protection, and investment of special funds not used in operation of institutions.

(g) Administration of group benefits on behalf of members or clients including life and hospital insurance, annuity or retirement plans, financial aid, etc.

(h) Other activities performed primarily as a service to a membership, clients, or the public.

3. This definition shall be applied to all items of cost of significant amount unless the institution demonstrates that the application of any different current practice achieves substantially the same results. Direct cost items of minor amount may be distributed as indirect costs as provided in section D.

D. Indirect Costs

1. An indirect cost is one which, because of its incurrence for common or joint objectives, is not readily subject to treatment as a direct cost. Minor direct cost items may be considered to be indirect costs for reasons of practicality. After direct costs have been determined and charged directly to the grant/contract or other work as appropriate, indirect costs are those remaining to be allocated to the several classes of work. The overall objective of the allocation process is to distribute the indirect costs of the institution to its various major activities or cost objectives in reasonable proportions with the benefits provided to those activities or cost objective. Because of the diverse natures and purposes of organizations falling within the definition of a non-profit organization, it is impractical to specifically identify those functions which constitute major activities for purposes of identifying and distributing indirect costs. Such identification will be dependent upon an institution's purpose-in-being, the services it renders to the public, its clients and/or members, the amount of effort devoted to fund raising activities, public relations, and membership activities, etc. (See section C–2.)

2. Indirect costs shall be accumulated by logical cost groupings with due consideration of the reasons for incurring the costs. Each grouping should be determined so as to permit distribution of the grouping on the basis of the benefits accruing to the several cost objectives. Sub-grouping may be required where there is no single equitable distribution base for all the elements of cost comprising a group. Actual conditions must be taken into account in selecting the method or base to be used in distributing the expenses assembled under each of the individual cost groupings established to applicable cost objectives. Where a distribution can be made by assignment of a cost grouping directly to the area benefited, the distribution should be made in that manner. Where the expenses under a cost grouping are more general in nature, the distribution to the cost objectives should be made through use of a selected base which will produce results which are equitable to both the Government and the institution. In general, any cost element or cost-related factor associated with the institution's work is potentially adaptable for use as a distribution base provided (1) it can readily be expressed in terms of dollars or other quantitative measure (total direct expenditures, direct salaries, manhours applied, square feet utilized, hours of usage, number of documents processed, population served, and the like); and (2) it is common to the cost objectives during the base period. The essential consideration in selection of the distribution base in each instance is that it be the one best suited for assigning the pool of costs to the cost objectives in accord with the relative benefits derived; the traceable cause and effect relationship; or logic and reason, where neither benefit nor cause and effect relationship is determinable.

3. The number and composition of the groupings should be governed by practical considerations and should be such as not to complicate unduly the allocation where substantially the same results are achieved through less precise methods.

4. A base period for distribution of indirect costs is the period during which such costs are incurred and accumulated for distribution to work performed within that period. The base period normally should coincide with the fiscal year established by the institution, but in any event the base period should be so selected as to avoid inequities in the distribution of costs.

E. Determination and Application of Indirect Cost Rate or Rates

1. *Indirect cost pools.* (a) Subject to (b) below, indirect costs allocable to an institution's direct functions should be treated as a common pool, and the costs in such common pool should then be distributed to the individual projects benefiting therefrom by use of a single rate.

(b) In some instances a single rate for use across the board on all activities at an institution may not be appropriate, since it would not take into account those different environmental factors which may affect substantially the indirect costs applicable to a particular segment of work at the institution. For this purpose, a particular segment of work may be that performed under a single grant/contract or it may consist of work under a group of grants/contracts performed in a common environment. The environmental factors are not limited to the physical location of the work. Other important factors are the level of the administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. Where a particular segment of work is performed within an environment which appears to generate a significantly different level of indirect costs, provision should be made for a separate indirect cost pool applicable to such work. The separate indirect cost pool should be developed during the course of the regular distribution process, and the separate indirect cost rate resulting therefrom should be utilized provided it is determined that (1) such indirect cost rate differs significantly from that which would have been obtained under (a) above, and (2) the volume of work to which such rate would apply is material in relation to other activity at the institution.

2. *The distribution base.* Indirect costs should be distributed to each applicable project on the basis of direct salaries and wages, total direct costs or other basis which results in an equitable distribution. For this purpose, an indirect cost rate should be determined for each of the separate indirect cost pools developed pursuant to section E.1. The rate in each case should be stated as the percentage which the amount of the particular indirect cost pool is of the base selected.

F. Application of Principles and Procedures

1. Costs shall be allowed to the extent that they are reasonable (see B.3) allocable (see B.4) and determined to be allowable in view of the other factors set forth in paragraph B.2. and section G. These criteria apply to all of the selected items of cost which follow notwithstanding that particular guidance is provided in connection with certain specific items for emphasis or clarity.

2. Costs of all subcontracts under a grant or cost-reimbursement type contract are subject to those Federal cost regulations and policies appropriate to the subcontract involved. Thus if the subcontract is for supplies or services with a nonprofit institution other then an educational institution, hospital or State and local governmental unit this document would

apply; if the subcontract is for supplies or services with a commercial organization, Federal Procurement Regulation Part 1.15.2 would apply; if the subcontract is with an educational institution, Appendix D to this Part (Federal Procurement Regulation Part 1.15.3) would apply; if the subcontract is with a hospital, the Department of Health, Education, and Welfare's Cost Principles for Hospitals would apply (see Appendix E to this Part).

3. Selected items of cost are treated in Section G. However, section G does not cover every element of cost and every situation that might arise in a particular case. Failure to treat any item of cost in Section G is not intended to imply that it is either allowable or unallowable. With respect to all items, whether or not specifically covered, determination of allowability shall be based on the principles and standards set forth in this document and, where appropriate, the treatment of similar or related selected items.

G. General Standards for Selected Items of Cost

Sections G–1 through G–46 provide standards to be applied in establishing the allowability of certain items involved in determining costs. These standards should apply irrespective of whether a particular item of cost is properly treated as direct cost or indirect cost. Failure to mention a particular item of cost in the standards is not intended to imply that it is either allowable or unallowable; rather determination as to allowability in each case should be based on the treatment or standards provided for similar or related items of cost. In case of a discrepancy between the provisions of a specific grant/contract and the applicable standards provided, the provisions of the grant/contract shall govern. Under any given grant/contract the reasonableness and allocability of certain items of costs may be difficult to determine. This is particularly true in connection with nonprofit institutions which are so diverse in nature and not subject to effective competitive restraints. In order to avoid possible subsequent disallowance or dispute based on unreasonableness or nonallocability, it is important that institutions entering into grants or contracts with the Government seek agreement in advance of the incurrence of special or unusual costs in categories where reasonableness or allocability are difficult to determine. Such action may also be initiated by the Government. Examples of costs on which advance agreements may be particularly important are:

1. Compensation for personal services;
2. Consultant fees;
3. Deferred maintenance costs;
4. Excess facility costs;
5. Material, services, and supplies sold between organizations or divisions under common control;
6. Preaward costs;
7. Publication and public information costs;
8. Royalties;
9. Training and educational costs;
10. Travel costs, as related to special or mass personnel movement, and to the class of air-travel accommodations allowable;
11. Use charge for fully depreciated assets;
12. Depreciation or use charge on assets donated to the institution by third parties.

1. *Advertising costs.* (a) Advertising costs mean the costs of advertising media and corollary administrative costs. Advertising media include magazine, newspapers, radio, and television programs, direct mail, trade papers, outdoor advertising, dealer cards, and window displays, conventions, exhibits, free goods, and samples, and the like.

(b) The only advertising costs allowable are those which are solely for (1) the recruitment of personnel required for the performance by the institution of obligations arising under the grant/contract, when considered in conjunction with all other recruitment costs, as set forth in G.36; (2) the procurement of scarce items for the performance of the grant/contract or (3) the disposal of scrap or surplus materials acquired in the performance of the project. Costs of this nature, if incurred for more than one Government award or for both Government work and other work of the institution, are allowable to the extent that the principles in paragraphs B–3, B–4, and section D are observed.

2. *Bad debts.* Bad debts, including losses (whether actual or estimated) arising from uncollectible customers' accounts and other claims, related costs, and related legal costs, are unallowable.

3. *Bidding or proposal costs.* Bidding or proposal costs are the immediate costs of preparing bids or proposals on potential Government and non-Government contracts or projects or applications for financial assistance under Federal grant and contract programs, including development of scientific, engineering and cost data necessary to support the institution's bids, proposals or applications. Bidding costs of the current accounting period are allowable as part of the indirect cost pool. Costs of past accounting periods are unallowable. Bidding costs do not include any of those costs described in section G–16 and G–30.

4. *Bonding costs.* (a) Bonding costs arise when the Government requires assurance against financial loss to itself or others by reason of the act or default of the grantee/contractor. They arise also in instances where the grantee/contractor requires similar assurance. Included are such bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds.

(b) Costs of bonding required pursuant to the terms of the grant/contract are allowable.

(c) Costs of bonding required by the grantee/contractor in the general conduct of its operations are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

5. *Civil defense costs.* (a) Civil defense costs are those incurred in planning for, and the protection of life and property against, the possible effects of enemy attack. Reasonable costs of civil defense measures (including costs in excess of normal plant protection costs, first-aid training and supplies, fire fighting training and equipment, posting of additional exit notices and directions, and other approved civil defense measures) undertaken on the institution's premises pursuant to suggestions or requirements of civil defense authorities are allowable when allocated to all work of the institution.

(b) Costs of capital assets under (a) above are allowable through depreciation or use charges in accordance with G–10.

(c) Contributions to local civil defense funds and projects are unallowable.

6. *Compensation for personal services*—(a) *Definition.* Compensation for personal services includes all remuneration paid currently or accrued in whatever form and whether paid immediately or deferred for services rendered by employees of the institution during the period of grant/contract performance. It includes, but is not limited to salary, wages, directors' and executive committee members' fees, bonuses, incentive awards, employee insurance, fringe benefits, and contributions to pension, annuity, and management employee incentive compensation plans.

(b) *Allowability.* Except as otherwise specifically provided in this subsection, the costs of compensation for personal services are to be treated as allowable to the extent that:

(1) Compensation is paid in accordance with policy, programs, and procedures that effectively relate individual compensation to the individual's contribution to the performance of grant or contract work, result in internally consistent treatment of employees in like situations, and effectively relate compensation paid within the organization to that paid for similar services outside the organization;

(2) Total compensation of individual employees is reasonable for the services rendered; and

(3) Costs are not in excess of those costs which are allowable by the Internal Revenue Code and regulations thereunder.

(c) *Reasonableness.* (1) When the institution is predominantly engaged in activities other than those sponsored by the Federal Government, compensation for employees on federally sponsored work will be considered reasonable to the extent that it is consistent with that paid for similar work in the institution's other activities;

(2) When the institution is predominantly engaged in federally sponsored activities, and in cases where the kind of employees required for the federally sponsored activities are not found in the institution's other activities, compensation for employees on federally sponsored work will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor markets in which the institution competes for the kind of employees involved.

(d) *Review and approval of compensation of individual employees.* In determining the reasonableness of compensation, the compensation of each individual employee normally need not be subject to review and approval. Reviews and approvals of individuals need be made only in those cases in which a general review reveals amounts or types of compensation which appear unreasonable or otherwise out of line.

(e) *Special considerations in determining allowability.* Certain conditions require special consideration and possible limitation as to allowability for grant and contract cost purposes where amounts appear excessive. Among such conditions are the following:

(1) Compensation to share holders, members, trustees, directors, associates, officers or members of the immediate families thereof, or to persons who are contractually committed to acquire a substantial financial interest in the enterprise. Determination should be made that such compensation is reasonable for the actual personal services rendered rather than a distribution of earnings in excess of costs.

(2) Any change in an institution's compensation policy resulting in a substantial increase in the institution's level of compensation, particularly when it was concurrent with an increase in the ratio of Government awards to other business, or any change in the treatment of allowability of specific types of compensation due to changes in Government policy.

(3) The institution's activities are such that its compensation levels are not subject to the restraints normally occurring in the conduct of competitive business.

(*f*) Notwithstanding any other provisions of this subsection, costs of compensation are not allowable to the extent that they result from provisions of labor-management agreements that, as applied to work in the performance of Government grants or contracts are determined to be unreasonable either because they are unwarranted by the character and circumstances of the work or because they are discriminatory against the Government. The application of the provisions of a labor-management agreement designed to apply to a given set of circumstances and conditions of employment (for example, work involving extremely hazardous activities or work not requiring recurrent use of overtime) is unwarranted when applied to a Government grant or contract involving significantly different circumstances and conditions of employment, (for example, work involving less hazardous activities or work continually requiring use of overtime). It is discriminatory against the Government if its results in individual personnel compensation (in whatever form or name) in excess of that being paid for similar non-Government work under comparable circumstances. Disallowance of costs will not be made under this subparagraph unless:

(1) The institution has been permitted an opportunity to justify the costs; and

(2) Due consideration has been given to whether there are unusual conditions pertaining to the Government work which impose burdens, hardships, or hazards on the institution's employees, for which compensation that might otherwise appear unreasonable is required to attract and hold necessary personnel.

(g)(1) In addition to the general requirements set forth in (e) through (*f*) of this subsection, certain forms of compensation are subject to further requirements as specified in (2) through (9) below.

(2) *Salaries and wages.* Salaries and wages for current services include gross compensation paid to employees in the form of cash, products, or services, and are allowable. However, see G.25 as it relates to compensation for overtime.

(3) *Incentive compensation.* Incentive compensation to employees based on cost reduction, or efficient performance, suggestion awards, safety awards, etc. are allowable to the extent that the overall compensation is determined to be reasonable and such costs are paid or accrued pursuant to an agreement entered into in good faith between the institution and the employees before the services were rendered, or pursuant to an established plan followed by the institution to consistently as to imply, in effect, an agreement to make such payment. Awards, and incentive compensation when deferred are allowable to the extent provided in (4) below.

(4) *Deferred compensation.* (a) As used herein, deferred compensation includes all remuneration, in whatever form, for which the employee is not paid until after the lapse of a stated period of years or the occurrence of other events as provided in the plans, except that it does not include normal end of accounting period accruals for regular salaries and wages. It includes (i) contributions to pension and annuity plans, (ii) contributions to disability, withdrawal, insurance, survivorship, and similar benefit plans, and (iii) other deferred compensation.

(b) Deferred compensation is allowable to the extent that (i) except for past service pension and retirement costs, it is for services rendered during the grant/contract period; (ii) it is, together with all other compensation paid to the employee, reasonable in amount; (iii) it is paid pursuant to an agreement entered into in good faith between the institution and its employees before the services are rendered, or pursuant to an established plan followed by the institution so consistently as to imply, in effect, an agreement to make such payments; (iv) the benefits of the plan are vested in the employees or their designated beneficiaries and no part of the deferred compensation reverts to the employer institution; (v) in the case of past service pension costs, it is amortized over a period of ten years or more; and (vi) for a plan which is subject to approval by the Internal Revenue Service, it falls within the criteria and standards of the Internal Revenue Code and the regulations of the Internal Revenue Service.

(c) In determining the cost of deferred compensation allowable under the grant or contract, appropriate adjustments shall be made for credits or gains, including those arising out of both normal and abnormal employee turnover, or any other contingencies that can result in a forfeiture by employees of such deferred compensation. Adjustments shall be made only for forfeitures which directly or indirectly inure to the benefit of the institution; forfeitures which inure to the benefits of other employees covered by a deferred compensation plan with no reduction in the institution's costs will not normally give rise to an adjustment in grant/contract costs. Adjustments for normal employee turnover shall be based on the institution's experience and on foreseeable prospects, and shall be reflected in the amount of cost currently allowable. Such adjustments will be unnecessary to the extent that the institution can demonstrate that its contributions take into account normal forfeitures. Adjustments for possible future abnormal forfeitures shall be effected according to the following rules:

(i) Abnormal forfeitures that are foreseeable and which can be currently evaluated with reasonable accuracy, by actuarial or other sound computation shall be reflected by an adjustment of current costs otherwise allowable; and

(ii) Abnormal forfeitures, not within (i) above, may be made the subject of agreement between the Government and the institution either as to an equitable adjustment or a method of determining such adjustment.

(d) In determining whether deferred compensation is for services rendered during the agreement period or is for future services, consideration shall be given to conditions imposed upon eventual payment, such as requirements of continued employment, consultation after retirement, and covenants not to compete.

(5) *Fringe benefits.* Fringe benefits are allowances and services provided by the institution to its employees as compensation in addition to regular wages and salaries. Costs of fringe benefits, such as pay for vacations, holidays, sick leave, military leave, employee insurance, and supplemental unemployment benefit plans are allowable to the extent required by law, employer-employee agreement, or an established policy of the institution.

(6) Severance pay. See G.40.

(7) Training and education expenses. See G.44.

(8) *Location allowances.* (a) "Location allowances," sometimes called "supplemental pay" or "incentive pay," are compensation in addition to normal wages or salaries and are paid by institutions to especially compensate or induce employees to undertake or continue work at locations which may be isolated or in an unfavorable environment. Location allowances include extra wage or salary payments in the form of station allowances, extended per diem, or mileage payments for daily commuting; they also include such benefits as institution-furnished housing. Payment of location allowances shall be allowed as costs under grants and cost-reimbursement type contracts, or recognized in pricing fixed-price type contracts, only with prior approval in writing from the awarding agency and only where and so long as the isolation or unfavorable environment of the site makes such payments necessary to the accomplishment of the work without unacceptable delays. Whether the site is so isolated, or its environment is so unfavorable, as to require location allowances is to be determined in the light of (a) its location and climate; (b) the availability and adequacy of housing within reasonable commuting distance; and (c) the availability and adequacy of educational, recreational, medical, and hospital facilities. The extent to which compensation includes location allowances is to be determined by comparing it with (a) the institution's normal compensation policy, including pay scales at its principal operating locations; (b) pay scales of other organizations and concerns operating at or near the site; and (c) compensation paid by other concerns within the same field for similar services elsewhere.

(b) Locations for which location allowances are paid shall be reviewed at least once a year to determine whether such allowances should continue to be allowed.

(6) *Support of salaries and wages.* (a) Direct charges for professionals must be supported by either:

(i) An adequate appointment and workload distribution system, accompanied by monthly reviews performed by responsible change in workload distribution of each professional (i.e., an exception reporting system) or

(ii) A monthly after-the-fact certification system which will require persons in supervisory positions having firsthand knowledge of the services performed to report the distribution of effort (i.e., a positive reporting system). Such reports must account for the *total* salaried effort of the persons covered. Consequently, a system which provides for the reporting only of effort applicable to federally sponsored activities is not acceptable.

(b) Direct charges for salaries and wages of nonprofessionals will be supported by time and attendance and payroll distribution records.

(c) Allowable indirect personal services costs will be supported by the institution's accounting system maintained in accordance with generally accepted institutional practices. Where a comprehensive accounting system does not exist, the institution should make periodic surveys no less frequently than annually to support the indirect personal services costs for inclusion in the overhead pool. Such supporting documentation must be retained for subsequent review by Government representatives.

7. *Capital expenditures.* The costs of equipment, buildings, and repairs which materially increase the value or useful life of buildings or equipment, are unallowable except as provided for in the grant/contract.

8. *Contingencies.* (a) A contingency is a possible future event or condition arising from presently known or unknown causes, the outcome of which is indeterminable at the present time.

(b) In historical costing, contingencies are not normally present since such costing deals with costs which have been incurred and recorded on the institution's books. Accordingly, contingencies are generally unallowable for historical costing purposes. However, in some cases, as for example, terminations, a contingency factor may be recognized which is applicable to a past period to give recognition to minor unsettled factors in the interest of expeditious settlement.

(c) In connection with estimates of future costs, contingencies fall into two categories:

(1) Those which may arise from presently known and existing conditions, the effects of which are foreseeable within reasonable limits of accuracy; e.g., pension funds, sick leave, and vacation accruals, etc. In such situations where they exist, contingencies of this category are to be included in the estimates of future cost so as to provide the best estimate of performance costs; and

(2) Those which may arise from presently known or unknown conditions, the effect of which cannot be measured so precisely as to provide equitable results to the institution and to the Government; e.g., results of pending litigation, and other general business risks. Contingencies of this category are to be excluded from cost estimates under the several items of cost, but should be disclosed separately, including the basis upon which the contingency is computed in order to facilitate the negotiation of appropriate contractual coverage (see, for example, G-17, G-21, and G-40).

9. *Contributions and donations.* (a) Contributions and donations by the grantee/contractor are unallowable.

(b) The value of donated services or goods provided by individual volunteers or members of volunteer organizations is not an allowable cost; however, the fair market value of donated services or goods utilized in the performance of a direct cost activity as defined in C.1 and C.2 shall be considered in the determination of the indirect cost rate(s) and, accordingly, shall be allocated a proportionate share of indirect cost.

10. *Depreciation and use allowances.* (a) Institutions may be compensated for the use of buildings, capital improvements and usable equipment on hand through depreciation or use allowances. Depreciation is a charge to current operations which distributes the cost of a tangible capital asset, less estimated residual value, over the estimated useful life of the asset in a systematic and logical manner. It does not involve a process of valuation. Useful life has reference to the prospective period of economic usefulness in the particular institution's operations as distinguished from physical life. Use allowances are the means of allowing compensation when depreciation or other equivalent costs are not considered.

(b) Depreciation or a use allowance on assets donated by third parties is allowable. However, any limitations on the amount of depreciation which would have applied to the donor as a result of restrictions contained in this Section shall also apply to the recipient organization.

(c) Due consideration will be given to Government-furnished facilities utilized by the institution when computing use allowances and/or depreciation if the Government-furnished facilities are material in amount. Computation of the use allowance and/or depreciation will exclude both the cost or any portion of the cost of grounds, buildings and equipment borne by or donated by the Federal Government, irrespective of where title was originally vested or where it presently resides, and secondly, the cost of grounds. Capital expenditures for land improvements (paved areas, fences, streets, sidewalks, utility conduits, and similar improvements not already included in the cost of buildings) are allowable provided the systematic amortization of such capital expenditures has been provided in the institution's books of account, based on reasonable determinations of the probable useful lives of the individual items involved, and the share allocated to the grant or contract is developed from the amount thus amortized for the base period involved.

(d) Normal depreciation on an institution's plant, equipment, and other capital facilities, except as excluded by (d) below, is an allowable element of cost provided that the amount thereof is computed:

(1) Upon a property cost basis which could have been used by the institution for Federal Income Tax purposes, had such institution been subject to the payment of income tax; and

(2) By the consistent application to the assets concerned of any generally accepted accounting method, and subject to the limitations of the Internal Revenue Code of 1954 as amended, including—

(i) The straight line method;

(ii) The declining balance method, using a rate not exceeding twice the rate which would have been used had the annual allowance been computed under the method described in (i) above;

(iii) The sum-of-the-years-digits method; and

(iv) Any other consistent method productive of an annual allowance which, when added to all allowances for the period commencing with the use of the property and including the current year, does not during the first two-thirds of the useful life of the property exceed the total of such allowances which would have been used had such allowances been computed under the method described in (ii) above.

(v) Where the depreciation method is followed, adequate property records must be maintained. The period of useful service (service life) established in each case for usable capital assets must be determined on a realistic basis which takes into consideration such factors as type of construction, nature of the equipment used, technological developments in the particular area, and the renewal and replacement policies followed for the individual items or classes of assets involved. Where the depreciation method is introduced for application to assets acquired in prior years, the annual charges therefrom must not exceed the amounts that would have resulted had the depreciation method been in effect from the date of acquisition of such assets.

(vi) Depreciation on idle or excess facilities shall not be allowed except on such facilities as are reasonably necessary for standby purposes. (See G. 13.)

(vii) Where an institution elects to go on a depreciation basis for a particular class of assets, no depreciation, rental or use charge may be allowed on any such assets that would be viewed as fully depreciated. *Provided, however,* that reasonable use charges may be negotiated for any such assets if warranted after taking into consideration the cost of the facility or item involved, the estimated useful life remaining at time of negotiation, the actual replacement policy followed in the light of service lives used for calculating depreciation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the facility or item for the purpose contemplated.

(viii) Where the use allowance method is followed, the use allowance for buildings and improvements will be computed at an annual rate not exceeding 2 percent of acquisition cost. The use allowance for equipment will be computed at an annual rate not exceeding 6⅔ percent of acquisition cost of usable equipment in those cases where the institution maintains current records with respect to such equipment on hand. Where the institution's records reflect only the cost (actual or estimated) of the original complement of equipment, the use allowance will be computed at an annual rate not exceeding 10 percent of such cost. Original complement for this purpose means the complement of equipment initially placed in buildings to perform the functions currently being performed in such buildings; however, where a permanent change in the function of a building takes place, a redetermination of the original complement of equipment may be made at that time to establish a new original complement. In those cases where no equipment records are maintained, the institution will justify a reasonable estimate of the acquisition cost of usable equipment which may be used to compute the use allowance at an annual rate not exceeding 6⅔ percent of such estimate.

(ix) Depreciation and/or use charges should usually be allocated to all activities as an indirect cost.

11. *Employee morale, health, welfare costs, and credits.* (a) Employee morale, health, and welfare activities are those services or benefits provided by the institution to its employees to improve working conditions, employer-employee relations, employee morale, and employee performance. Such activities include house publications, health or first-aid clinics, recreation, employee counseling services and, for the purpose of this paragraph, food and dormitory services. Food and dormitory services include operating or furnishing facilities for cafeterias, dining rooms, canteens, lunch wagons, vending machines, living accommodations, or similar types of services for the institution's employees at or near its facilities.

(b) Except as limited by (c) below, the aggregate of costs incurred on account of all activities mentioned in (a) above, less income generated by all such activities is allowable to the extent that the net amount is reasonable.

(c) Losses from the operation of food and dormitory services may be included as cost incurred under (b) above, only if the institution's objective is to operate such services on a break-even basis. Losses sustained because food services or lodging accommodations are furnished without charge or at prices or rates which obviously would not be conducive to accomplishment of the above objective, are not allowable, except that a loss may be allowed to the extent the institution can demonstrate that unusual circumstances exist (e.g., (1) where the institution must provide food or dormitory services at remote locations where adequate commercial facilities are not reasonably available or (ii) where it is necessary to operate a facility at a lower volume than the facility could economically support) such that, even with efficient management, operation of the services on a break-even basis would require charging inordinately high prices or prices or rates higher than those charged by commercial establishments offering the same services in the same geographical areas.

(d) In those situations where the institution has an arrangement authorizing an employee association to provide or operate a service such as vending machines in the institution's plant, and retain the profits derived therefrom, such profits shall be treated in the same manner as if the institution were providing the service (but see (e)).

(e) Contributions by the institution to an employee organization, including funds set over from vending machine receipts or similar sources, may be included as cost incurred under (b) above only to the extent that the institution demonstrates that an equivalent amount of the costs incurred by the employee organization would be allowable if incurred by the institution directly.

12. *Entertainment costs.* Costs of amusement, diversion, social activities, ceremonials, and incidental costs relating thereto, such as meals, lodging, rentals, transportation, and gratuities, are unallowable (but see G-11 and G-43).

13. *Excess facility costs.* (a) As used in this paragraph, the words and phrases defined in this subparagraph (a) shall have the meanings set forth below.

(1) Facilities means plant or any portion thereof (inclusive of land integral to the operation); equipment indivdually or collectively; or any other tangible capital asset, wherever located, and whether owned or leased by the institution.

(2) Idle Facilities means completely unused facilities that are excess to the institution's current needs.

(3) Idle Capacity means the unused capacity of partially used facilities. It is the difference between that which a facility could achieve under 100 percent operating time on a one shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materiels, and other normal delays, and the extent to which the facility was actually used to meet demands during the accounting period. (A multiple shift basis may be used if it can be shown that this amount of usage could normally be expected for the type of facility involved.)

(4) Costs of idle facilities or idle capacity are costs such as maintenance, repair, housing, rent, and other related costs, e.g., property taxes, insurance, and depreciation.

(b) The costs of idle facilities are unallowable except to the extent that:

(i) They are necessary to meet fluctuations in workload; or

(ii) Although not necessary to meet fluctuations in workload, they were necessery when acquired and are now idle because of changes in program requirements, grantee/ contractor efforts to produce more economically, reorganization, termination, or other causes which could not have been reasonably foreseen.

Under the exception stated in (ii) of this subparagraph (b), costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed 1 year, depending upon the initiative taken to use, lease, or dispose of such facilities (but see G.42(b) and (e)).

(c) The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or overhead rates from period to period. Such costs are allowable, provided the capacity is reasonably anticipated to be necessary or was originally reasonable and is not subject to reduction or elimination by subletting, renting, or sale, in accordance with sound business, economics, or security practices. Widespread idle capacity throughout an entire plant or among a group of assets having substantially the same function may be idle facilities.

14. *Fines and penalties.* Costs of fines and penalties resulting from violations of, or failure of the institution to comply with, Federal, State, and local laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of the grant or contract instructions in writing from the awarding agency.

15. *Fringe benefits.* (See G.–6–(g)–(5.)

16. *Independent research and development.* (a) An institution's independent research and development (I.R. & D.) is that research and development which is not sponsored by the Government or a non-Government organization or agency under a grant/ contract or other arrangement.

(b) Basic research, for the purpose of this document, is that type of research which is directed toward increase of knowledge within a particular discipline. In such research, the primary aim of the investigator is a fuller knowledge or understanding of the subject under study, rather than any practical application thereof. Applied research, for the purpose of this document consists of that type of effort which (1) is normally derived from the results of basic research, but may not be severable from the related basic research, (2) attempts to determine and expand the potentialities of new scientific discoveries or improvements in technology, materiels, processes, methods, devices, and techniques, and (3) attempts to "advance the state of the art." Applied research, does not include any such efforts when their principal aim is the design, development, or test of specific articles or services to be offered for sale, which are within the definition of the term development as defined in (c) below. Census research, for the purpose of this document, is that type of activity devoted to the compilation and interpretation of statistical and other analytical information acquired through survey (e.g., interview, circularization of questionnaires), observations or from books, treatises, articles or other sources relative to specifically defined activities, occurrences or conditions for the purpose of accomplishing some scientific end.

(c) "Development" is the systematic use of scientific knowledge which is directed toward the production of, or improvements in, useful products to meet specific performance requirements, but exclusive of manufacturing and production engineering.

(d) Independent research and development will be treated in a manner consistent with the treatment of sponsored research and development. Accordingly, an institution's I.R. & D. shall be allocated in proportionate share of indirect costs on the same basis that indirect costs are allocated to sponsored research and development.

(e) The cost of an institution's I.R. & D. including its proportionate share of indirect costs, is unallowable.

17. *Insurance and indemnification.* (a) Insurance includes insurance which the institution is required to carry, or which is approved, under the terms of the grant or contract and any other insurance which the institution maintains in connection with the general conduct of its business.

(1) Costs of insurance required or approved, and maintained, pursuant to the grant or contract are allowable.

(2) Costs of other insurance maintained by the institution in connection with the general conduct of its business are allowable subject to the following limitations:

(a) Types and extent of coverage shall be in accordance with sound business practice and the rates and premiums shall be reasonable under the circumstances;

(b) Costs allowed for business interruption or other similar insurance shall be limited to exclude coverage of profit;

(c) Costs of insurance or of any provision for a reserve covering the risk of loss of or damage to Government property are allowable only to the extent that the institution is liable for such loss or damage and such insurance or reserve does not cover loss or damage which results from willful misconduct or lack of good faith on the part of any of the institution's trustees, directors or officers, or other equivalent representatives, who have supervision or direction of (i) all or substantially all of the institution's business, or (ii) all or substantially all of the institution's operations at any one separate location in which the grant or contract is being performed, or who are specifically identified as the project director in the project or otherwise primarily responsible for the direction and/or execution of the project supported by the grant or contract.

(d) Provisions for a reserve under an approved self-insurance program are allowable to the extent that types of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks; and

(e) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibilities are allowable only to the extent that the insurance represents additional compensation. (See C-6).

(3) Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise) are unallowable unless expressly provided for in the grant or contract, except:

(a) Costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound business practice, are allowable; and

(b) Minor losses not covered by insurance, such as spoilage, breakage, and disappearance of supplies, which occur in the ordinary course of doing business, are allowable.

(c) Indemnification includes securing the institution against liabilities to third persons and any other loss or damage not compensated by insurance or otherwise. The Government is obligated to indemnify the institution only to the extent expressly provided in (a)(3) above.

18. *Interest and other financial costs.* (a) Costs incurred for interest on borrowed capital or temporary use of endowment funds, however represented, are unallowable.

(b) Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions, are unallowable.

(c) Costs of investment counsel and staff and similar expenses incurred solely to enhance income from investments are unallowable.

(d) Where substantial effort or time is devoted to fund raising and investment activities as described in (b) and (c) in relation to other functions of an institution, such activities shall be considered as a major activity of the institution and shall be allocated its share of indirect costs in accordance with section D. (See also C-2.)

19. *Labor relations costs.* Costs incurred in maintaining satisfactory relations between the institution and its employees, including costs of labor management committees, employee publications, and other related activities, are allowable.

20. *Losses on other grants or contracts.* Any excess of costs over income on any grant or contract is unallowable as a cost of any other grant or contract.

21. *Maintenance and repair costs.* (a) Costs necessary for the upkeep of property (including Government property unless otherwise provided for), which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are to be treated as follows (but see G-10):

(1) Normal maintenance and repair costs are allowable;

(2) Extraordinary maintenance and repair costs are allowable provided such are allocated to the periods to which applicable for purposes of determining grant or contract costs.

(b) Expenditures for plant and equipment, including rehabilitation thereof, which, according to generally accepted accounting principles as applied under the institution's established policy, should be capitalized and subjected to depreciation, are allowable only on a depreciation basis.

22. *Materiels costs.* (a) The cost of consumable supplies, serum, drugs, fabricated parts, and other materiels necessary to carry out the objectives of a grant or contract, whether purchased outside or manufactured by the institution are allowable subject to the provisions (b) through (e) below. The cost may include such collateral items as inbound transportation and intransit insurance.

In computing these costs consideration will be given to reasonable overruns, spoilage, or defective work if consistent with the nature of the project being performed and the recognized practice of the industry.

(b) Costs of materiel shall be suitably adjusted for applicable portions of income and other credits, including available trade and cash discounts, refunds, rebates, allowances, and credits for scrap and salvage and materiel returned to vendors. Such income and other credits shall either be credited directly to the cost of the materiel involved or be allocated (as credits) to indirect costs. However, where the institution can demonstrate that failure to take cash discounts was due to reasonable circumstances, such lost discounts need not be so credited.

(c) Reasonable adjustments arising from differences between periodic physical inventories and book inventories may be included in arriving at costs, provided such adjustments relate to the period of performance of the grant or contract.

(d) When the materiels are purchased specifically for and identifiable solely with performance under a grant or contract, the actual purchase cost thereof should be charged to that grant or contract. If materiel is issued from stores, any generally recognized method of pricing such materiel is acceptable if that method is consistently applied and the results are equitable. When estimates of materiel costs to be incurred in the future are required, either current market price or anticipated acquisition cost may be used, but the basis of pricing must be disclosed.

(e) Allowance for all materiels, supplies and services which are sold or transferred between any division, subsidiary or affiliate of the institution under a common control shall be on the basis of cost incurred in accordance with these principles, except that when it is the established practice of the transferring organization to price interorganization transfers of materiels, supplies and services at other than cost for non-Government work of the institution or any division, subsidiary or affiliate of the institution under a common control, allowance may be at a price when:

(1) It is or is based on an "established catalog or market price of commercial items sold in substantial quantities to the general public;" or

(2) It is the result of "adequate price competition" and is the price at which an award was made to the affiliated organization after obtaining quotations on an equal basis from such organization and one or more outside sources which normally produce the item or its equivalent in significant quantity.

Provided, that in either case:

(1) The price is not in excess of the transferor's current sales price to his most favored customer (including any division, subsidiary, or affiliate of the institution under a common control) for a like quantity under comparable conditions, and

(2) The price is not determined to be unreasonable by the awarding agency.

The price determined in accordance with (1) above should be adjusted, when appropriate, to reflect the quantities being procured and may be adjusted upward or downward to reflect the actual cost of any modifications necessary because of grant or contract requirements.

23. *Organization costs.* Expenditures, such as incorporation fees, attorney's fees, accountant's fees, broker's fees, fees to promoters and organizers, in connection with (a) organization or reorganization of a business, or (b) raising capital, are unallowable unless specified otherwise in the grant or contract.

24. *Other business expenses.* Included in this item are such recurring expenses as preparation and publication of reports to members and trustees; preparation and submission of required reports and forms to taxing and other regulatory bodies; and incidental costs of director and committee meetings. The above and similar costs are allowable when allocated on an equitable basis.

25. *Overtime, extra-pay shift and multishift premiums.* Premiums for overtime, extra-pay shifts, and multishift work are allowable only to the extent approved by the awarding agency except:

(a) When necessary to cope with emergencies, such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;

(b) When by indirect labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;

(c) In the performance of tests, laboratory procedures, or other similar operations which are continuous in nature and cannot reasonably be interrupted or otherwise completed; or

(d) When lower overall cost to the Government will result.

Overtime premiums and shift premiums may be considered proper for approval when determined in writing by the awarding agency that approval:

(a) Is necessary to meet delivery or performance schedules, and such schedules are determined to be extended to the maximum consistent with essential program objectives;

(b) Is necessary to make up for delays which are beyond the control and without the fault or negligence of the institution;

(c) Is necessary to eliminate foreseeable bottlenecks of an extended nature which cannot be eliminated in any other way.

Approvals should ordinarily be prospective, but may be retroactive where justified by the circumstances. Such approvals may be for an individual grant or contract project, or program, or for a division, department, or branch, as most practicable.

Overtime for which overtime premiums would be at Government expense should not be approved under an award where the institution is already obligated, without the right to additional compensation, to meet the required delivery date.

Where overtime premiums or shift premiums are being paid at Government expense in connection with the performance of Government grant or contract the continued need therefor should be subject to periodic review by the awarding agency.

26. *Patent and copyright costs.* Costs of preparing disclosures, reports, and other documents required by the grant/contract and of searching the art to the extent necessary to make such disclosures, are allowable. In accordance with the conditions of the grant or contract relating to patents or copyrights, costs of preparing documents and any other costs, in connection with the filing of a patent application or copyright where title is conveyed to the Government, are allowable. However, similar costs incurred in connection with patents or copyrights where title is not conveyed to the Government are unallowable. (See G–39.)

27. *Pension plans.* (See G–6(g)–(4).)

28. *Plant protection costs.* Costs of items such as (a) wages, uniforms, and equipment of personnel engaged in plant protection, (b) depreciation on plant protection capital assets, and (c) necessary expenses to comply with security requirements are allowable.

29. *Plant reconversion costs.* Plant reconversion costs are those incurred in the restoration or rehabilitation of the institution's facilities to approximately the same condition existing immediately prior to the commencement of the grant or contract work, fair wear and tear excepted. Reconversion costs are unallowable except for the cost of removing Government property and the restoration or rehabilitation costs caused by such removal. However, in special circumstances where equity so dictates, additional costs may be allowed to the extent agreed upon in writing before the costs are incurred. Whenever such costs are given consideration, care should be exercised to avoid duplication through allowance as contingencies, as additional profit or fee, or in other grants or contracts.

30. *Preaward costs.* Preaward costs are those incurred prior to the effective date of the grant or contract directly pursuant to the negotiation and in anticipation of the award of the grant or contract where such incurrence is necessary to comply with the proposed delivery schedule or period of performance. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the award and only with the prior written approval of the awarding agency.

31. *Professional service cost—legal, accounting, scientific and other.* (a) Costs of professional services rendered by members of a particular profession who are not employees of the institution are allowable, subject to (b), (c) and (d) below, when reasonable in relation to the services rendered. (But see G–23.)

(b) Factors to be considered in determining the allowability of costs in a particular case include:

(1) The nature and scope of the service rendered in relation to the service required;

(2) The necessity of contracting for the service considering the institution's capability in the particular area;

(3) The past pattern of such costs, particularly in years prior to the award of Government work;

(4) The impact of Government work on the institution's business (i.e., what new problems have arisen);

(5) Whether the proportion of Government work to the institution's total business is such as to influence the institution in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Government grants/contracts;

(6) Whether the service can be performed more economically by employment rather than by contracting;

(7) The qualifications of the individual or concern rendering the service and the customary fees charged, especially on nongovernment grants/contracts;

(8) Adequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation; termination provisions).

(c) Retainer fees to be allowable must be reasonably supported by evidence of bona fide services available or rendered.

(d) Costs of legal, accounting, and consulting service, and related costs, incurred in connection with organization and reorganization, defense of anti-trust suits, and the prosecution of claims against the Government, are unallowable. Costs of legal, accounting, and consulting services, and related costs, incurred in connection with patent or copyright infringement litigation, are unallowable unless otherwise provided for in the grant or contract.

32. *Profits and losses on disposition of plant equipment, or other capital assets.* Profits or losses of any nature arising from the sale or exchange of plant, equipment, or other capital assets, including sale or exchange of either short- or long-term investments, shall be excluded in computing grant or contract costs.

33. *Public information services costs.* Public information services costs include the costs associated with promotions, public relations, pamphlets, news releases, and other forms of information services. Such costs are normally incurred to:

(a) Inform or instruct individuals, groups or the general public about health or social problems;

(b) Interest individuals or groups in participating in a service program of the institution;

(c) Provide stewardship reports to State and local Government agencies, benefactor foundations and associations, etc.;

(d) Appeal for funds;

(e) Disseminate the results of sponsored and non-sponsored research or other activity to the scientific community.

To the extent that the costs incurred for any of these purposes are identifiable with a particular cost objective they should be charged to the objective to which they relate.

If these costs are not identifiable with a particular cost objective, they should be allocated as indirect costs to all major activities of the institution except that costs related to fund-raising appeals are unallowable as costs of grants and contracts.

Public information service costs are unallowable as a direct cost of grants and contracts unless formally approved by the awarding agency.

34. *Publication and printing costs.* Publication costs include the costs of printing (including the processes of composition, platemaking, press work, binding and the end products produced by such processes), distribution, promotion, mailing and general handling.

Publication costs are unallowable as a direct cost of grants and contracts unless formally approved by the awarding agency.

35. *Rearrangement and alteration costs.* Costs incurred for ordinary or normal rearrangement and alteration of facilities are allowable. Special arrangement and alteration costs incurred specifically for the

project are allowable when written approval has been given in advance by the awarding agency.

36. *Recruitment costs.* (a) Subject to (b), (c), and (d) of this G–36, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of help-wanted advertising, operating costs of an employment office necessary to secure and maintain an adequate labor force, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, and travel costs of applicants for interviews for prospective employement are allowable to the extent that such costs are incurred pursuant to a well managed recruitment program. Where the institution uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

(b) In publications, costs of help-wanted advertising that (1) includes color, (2) includes advertising materiel for other than recruitment purposes, or (3) is excessive in size (taking into consideration recruitment purposes for which intended and normal business practices in this respect) are unallowable.

(c) Costs of (1) help-wanted advertising and (2) excessive salaries, fringe benefits, and special emoluments that have been offered to prospective employees, designed to attract personnel from another institution performing as grantee or contractor to the Government, or in excess of the standard practices in comparable institutions, are unallowable.

(d) Where relocation costs incurred incident to recruitment of a new employee have been allowed either as an allocable direct or indirect cost and the newly hired employee resigns for reasons within his control within 12 months after hire, the institution shall be required to refund or credit such relocation costs to the Government.

37. *Relocation costs.* (a) Relocation costs, for the purpose of this document, are costs incident to the permanent change of duty assignment (for an indefinite period, or for a stated period of no less than 12 months) of an existing employee or upon recruitment of a new employee. These costs may include, but are not limited to cost of (i) transportation of the employee, members of his immediate family and his household and personal effects to the new location; (ii) finding a new home, such as advance trips by employees and spouses to locate living quarters and temporary lodging during the transition period; (iii) closing costs (i.e., brokerage fees, legal fees, appraisal fees, etc.), incident to the disposition of housing; (iv) other necessary and reasonable expenses normally incident to relocation, such as cost of cancelling an unexpired lease, disconnecting or reinstalling household appliances, and purchase of insurance against damages to personal property; (v) loss on sale of home; and (vi) acquisition of a home in a new location (i.e., brokerage fees, legal fees, appraisal fees, etc.).

(b) Subject to (c) below, relocation costs of the type covered in (a) (i), (ii), (iii), and (iv) above are allowable, provided (i) the move is for the benefit of the employer; (ii) reimbursement is in accordance with an established policy or practice consistently followed by the employer, and such policy or practice is designed to motivate employees to relocate promptly and economically; (iii) the costs are not otherwise unallowable under the provisions of G–36 or any other paragraph of this document and (iv) amounts to be reimbursed shall not exceed the employee's actual (or reasonably estimated) expenses.

(c) Costs otherwise allowable under (b) above are subject to the following additional provisions: (i) the transition period for incurrance of costs of the type covered in (a) (ii) above shall be kept to the minimum number of days necessary under the circumstances, but shall not, in any event, exceed a cumulative total of 30 days including advance trip time; and (ii) allowance for cost of the type covered in (a)(iii) above shall not exceed 8 percent of the sales price of the property sold. Costs of the type covered in (a) (iii) and (iv) above are allowable only in connection with the relocation of existing employees, and are not allowable for newly recruited employees.

(d) Costs of the type covered in (a) (v) and (vi) above are not allowable.

38. *Rental costs (including sale and leaseback of facilities).* (a) Rental costs of land, building, and equipment and other personal property are allowable if the rates are reasonable in light of such factors as rental costs of comparable facilities and market conditions in the area, the type, life expectancy, condition, and value of the facilities leased, options available, and other provisions of the rental agreement. Application of these factors, in situations where rentals are extensively used, may involve among other considerations, comparison of rental costs with the amount which the institution would have received had it owned the facilities.

(b) Charges in the nature of rent between plants, divisions, or organizations under common control are allowable to the extent such charges do not exceed the normal costs of ownership, such as depreciation, taxes, insurance, and maintenance: Provided, That no part of such costs shall duplicate any other allowed costs.

(c) Unless otherwise specifically provided in the grant or contract, rental costs specified in sale and leaseback agreements, incurred by institutions through selling plant facilities to investment organizations, such as insurance companies, associate institutions, or to private investors, and concurrently leasing back the same facilities, are allowable only to the extent that such rentals do not exceed the amount which the grantee/contractor would have received had it retained legal title to the facilities.

(d) Rentals for land, building and equipment and other personal property owned by affiliated organizations including corporations or by stockholders, members, directors, trustees, officers or other key personnel of the institution or their families either directly or through corporations, trusts or other similar arrangements in which they hold a more than token interest are allowable only to the extent that such rentals do not exceed the amount the institution would have received had legal title to the facilities been vested in it.

(e) The allowability of rental costs under unexpired leases in connection with terminations is treated in G–42(e).

39. *Royalties and other costs for use of patents and copyrights.* (a) Royalties on a patent or copyright or amortization of the cost of acquiring by purchase a copyright, patent or rights thereto, necessary for the proper performance of the grant or contract applicable to grant products or processes, are allowable unless:

(1) The Government has a license or the right to free use of the patent;

(2) The patent or copyright has been adjudicated to be invalid, or has been administratively determined to be invalid;

(3) The patent or copyright is considered to be unenforceable; or

(4) The patent or copyright is expired.

(b) Special care should be exercised in determining reasonableness where the royalties may have been arrived at as a result of less than arm's-length bargaining; e.g.:

(1) Royalties paid to persons, including corporations, affiliated with the institution;

(2) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Government grant or contract would be awarded; or

(3) Royalties paid under an agreement entered into after the award of the grant or contract.

(c) In any case involving a patent or copyright formerly owned by the institution, the amount of royalty allowed should not exceed the cost which would have been allowed had the institution retained title thereto.

40. *Severance pay.* (a) Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages, by institutions to workers whose employment is being terminated. Costs of severance pay are allowable only to the extent that, in each case, it is required by (1) law, (2) employer-employee agreement, (3) established policy that constitutes, in effect, an implied agreement on the institution's part, or (4) circumstance of the particular employment.

(b) Costs of severance payments are divided into two categories as follows:

(1) Actual normal turnover severance payments shall be allocated to all work performed in the institution's facilities; or, where the institution provides for accrual of pay for normal severances, such method will be acceptable if the amount of the accrual is reasonable in light of payments actually made for normal severances over a representative past period, and if amounts accrued are allocated to all work performed in the institution's facilities; and

(2) Abnormal or mass severance pay is of such a conjectural nature that measurement of costs by means of an accrual will not achieve equity to both parties. Thus, accruals for this purpose are not allowable. However, the Government recognises its obligation to participate, to the extent of its fair share, in any specific payment. Thus, allowability will be considered on a case-by-case basis in the event of occurrence.

41. *Taxes.* (a) Taxes are certain charges levied by Federal, State, or local governments. They do not include fines and penalties except as otherwise provided herein. In general, taxes which the institution is required to pay and which are paid or accrued in accordance with generally accepted accounting principles are allowable, except for:

(1) Federal income taxes and similar levies against income of the institution derived from activities unrelated to the project supported by the grant or contract;

(2) Taxes in connection with financing, refinancing, or refunding operations (see G-18);

(3) Taxes from which exemptions are available to the institution directly or available to the institution based on an exemption afforded the Government except when the awarding agency determines that the administrative burden incident to obtaining the exemption outweighs the corresponding benefits accruing to the Government;

(4) Special assessments on land which represent capital improvements; and

(5) Taxes on any category of property which is used solely in connection with work other than on Government grants or contracts. (Taxes on property used solely in connection with either non-Government or Government work should be considered directly applicable to the respective category of work unless the amounts involved are insignificant or comparable results would otherwise be obtained.)

(b) Taxes otherwise allowable under paragraph (a) of this section, but upon which a claim of illegality or erroneous assessment exists, are allowable provided the institution, prior to payment of such taxes:

(1) Promptly requests instructions from the awarding agency concerning such taxes, and

(2) Takes all action directed by the awarding agency arising out of subparagraph (1) of this paragraph or an independent decision of the Government as to the existence of a claim of illegality or erroneous assessment, including cooperation with and for the benefit of the Government to (i) determine the legality of such assessment, or (ii) secure a refund of such taxes. Reasonable costs of any such action undertaken by the institution at the direction or with the concurrence of the awarding agency are allowable. Interest and penalties incurred by an institution by reason of the nonpayment of any tax at the direction of the awarding agency or by reason of the failure of the awarding agency to issue timely direction after prompt request therefor, are also allowable.

(c) Any refund of taxes, interest, or penalties, and any payment to the institution of interest thereon, attributable to taxes, interest, or penalties which were allowed as project costs, shall be credited or paid to the Government in the manner directed by the Government, provided any interest actually paid or credited to an institution incident to a refund of tax, interest or penalty shall be paid or credited to the Government only to the extent that such interest accrued over the period during which the institution had been reimbursed by the Government for the taxes, interest or penalties.

42. *Termination costs.* Grants and contracts terminations generally give rise to the incurrence of costs, or the need for special treatment of costs, which would not have arisen had the project not been terminated. Cost principles covering these items are set forth below. They are to be used in conjunction with the remainder of this document in termination situations.

(a) *Common items.* The cost of items reasonably usable on the institution's other work shall not be allowable unless the institution submits evidence that it could not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the institution, the awarding agency should consider the institution's plans and orders for current and scheduled production. Contemporaneous purchases of common items by the institution shall be regarded as evidence that such items are reasonably usable on the institution's other work. Any acceptance of common items as allocable to the terminated portion of the project should be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

(b) *Costs continuing after termination.* If in a particular case, despite all reasonable efforts by the institution, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this document, except that any such costs continuing after termination due to the negligent or willful failure of the institution to discontinue such costs shall be considered unallowable.

(c) *Initial costs.* Initial costs, including starting load and preparatory costs, are allowable, subject to the following:

(1) Starting load costs are costs of a nonrecurring nature arising in the early stages of operation, investigation or production and not fully absorbed because of the termination. Such costs may include the cost of labor and materiel, and related indirect cost attributable to such factors as:

(a) Excessive spoilage resulting from inexperienced labor;

(b) Idle time and subnormal production occasioned by testing and changing methods of processing;

(c) Employee training; and

(d) Unfamiliarity or lack of experience with the product, materiels, manufacturing processes, and techniques.

(2) Preparatory costs are costs incurred in preparing to perform the terminated project including costs of initial plant rearrangement and alterations, management and personnel organization, production planning and similar activities, but excluding special machinery and equipment and starting load costs.

(3) If initial costs are claimed and have not been segregated on the institution's books, segregation for settlement purposes shall be made from cost reports and schedules which reflect the high unit cost incurred during the early stages of the project.

(4) When the settlement proposal is on the inventory basis, initial costs should normally be allocated on the basis of total end items called for by the project immediately prior to termination; however, if the project includes end items of a diverse nature, some other equitable basis may be used, such as machine or labor hours.

(5) When initial costs are included in the settlement proposal as a direct charge, such costs shall not also be included in overhead.

(6) Initial costs attributable to only one project shall not be allocated to other projects.

(d) *Loss of useful value.* Loss of useful value of special tooling and special machinery and equipment is generally allowable if:

(1) Such special tooling, machinery, or equipment is not reasonably capable of use in the other work of the institution;

(2) The interest of the Government is protected by transfer of title or by other means deemed appropriate by the awarding agency; and

(3) The loss of useful value as to any one terminated project is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the project bears to the entire terminated project and other Government projects for which the special tooling and special machinery and equipment were acquired.

(e) *Rental costs.* Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated project less the residual value of such leases, if:

(1) The amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the project and such further period as may be reasonable; and

(2) The institution makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease.

There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the project, and of reasonable restoration required by the provisions of the lease.

(f) *Settlement expenses.* Settlement expenses including the following are generally allowable:

(1) Accounting, legal, clerical, and similar costs reasonably necessary for—

(a) The preparation and presentation to awarding agency of settlement claims and supporting data with respect to the terminated portion of the project, and

(b) The termination and settlement of subcontracts; and

(2) Reasonable costs for the storage, transportation, protection, and disposition of property acquired or produced for the project.

(g) Subcontractor claims. Subcontractor claims, including the allocable portion of claims which are common to the project and to other work of the institution are generally allowable.

43. *Trade, Business, Technical, and Professional Activity Costs*—(a) *Membership.* This category includes costs of memberships in trade, business, technical, and professional organizations. Such costs are allowable.

(b) Subscriptions. This item includes cost of subscriptions to trade, business, professional, or technical periodicals. Such costs are allowable.

(c) Meetings and conferences. This item includes costs of meals, transportation, rental of facilities for meetings, and costs incidental thereto, when the primary purpose of the incurrence of such costs is the dissemination of technical information or stimulation of production. Such costs are allowable.

44. *Training and educational costs.* (a) The costs of training courses taken by a bona fide employee to acquire basic skills which he should bring to the job or to qualify a person for duties other than those related to an institution's goals are unallowable.

(b) Costs of on-the-job training and part-time education, at an undergraduate or post-graduate college level, related to the job requirements of bona fide employees, identified in (1) through (5) below, are allowable.

(1) Training materials;

(2) Textbooks;

(3) Fees charged by the educational institution;

(4) Tuition charged by the educational institution, or in lieu of tuition, instructors' salaries and the related share of indirect cost of the educational institution to the extent that the sum thereof is not in excess of the tuition which would have been paid to the participating educational institution; and

(5) Straight-time compensation of each employee for time spent attending classes during working hours not in excess of 156 hours per year where circumstances do not permit the operation of classes or attendance at classes after regular working hours.

(c) Costs of tuition, fees, training materials and textbooks (but not subsistence, salary, or any other emoluments) in connection with full time scientific and medical education at a post-graduate (but not undergraduate) college level related to the job requirements of bona fide employees for a total period not to exceed 1 school year for each employee so trained, are allowable when approved in writing by the awarding agency.

(d) Grants to educational or training institutions, including the donation of facilities or other properties, scholarships, or fellowships, are considered contributions and are unallowable.

45. *Transportation costs.* Transportation costs include freight, express, cartage, and postage charges relating either to goods purchased, in process, or delivered. These costs are allowable. When such costs can readily be identified with the items involved, they may be directly costed as transportation costs or added to the cost of such items (see G-22).

Where identification with the materials received cannot readily be made, inbound transportation costs may be charged to the appropriate indirect cost accounts if the institution follows a consistent, equitable procedure in this respect. Outbound freight, if reimbursable under the terms of the grant or contract, shall be treated as a direct cost.

46. *Travel costs.* (a) Travel costs include costs of transportation, lodging, subsistence, and incidental expenses, incurred by institution personnel in a travel status while on official business.

(b) Travel costs may be based upon actual costs incurred, or on a per diem or mileage basis in lieu of actual costs, or on a combination of the two, provided the method used does not result in an unreasonable charge. The difference in cost between first-class and less than first-class air accommodations is unallowable except when less than first-class air accommodations are not reasonably available to meet necessary mission requirements, such as where less than first-class accommodations would (1) require circuitous routing, (2) require travel during unreasonable hours, (3) greatly increase the duration of the flight, (4) result in additional costs which would offset the transportation savings, or (5) offer accommodations which are not reasonably adequate for the medical needs of the traveler.

(c) Travel costs incurred in the normal course of overall administration of the business are allowable and shall be treated as indirect costs.

(d) Travel costs directly attributable to specific grant or contract performance are allowable and may be charged to the grant or contract in accordance with the principle of direct costing (see section C).

(e) Costs of personnel movement of a special or mass nature are allowable only when authorized or approved in writing by the sponsoring agency.

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